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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 SECURITIES AND EXCHANGE
4 COMMISSION

Plaintiff,

5 v.

23 Civ. 1346 (JSR)

6 TERRAFORM LABS PTE LTD. , et
7 al.

8 Defendants

9 -----x

10 New York, N.Y.
11 March 27, 2024
12 9:05 a.m.

Before:

13 HON. JED S. RAKOFF

14 District Judge
15 -and a Jury-

16 APPEARANCES

17 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Attorneys for Plaintiff

18 By: JAMES P. CONNOR

DEVON STAREN

CARINA CUELLAR

19 LAURA E. MEEHAN

CHRISTOPHER J. CARNEY

20 ROGER LANDSMAN

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APPEARANCES (Cont'd)

DENTONS US LLP

Attorneys for Defendant Terraform

BY: LOUIS A. PELLEGRINO III

DAVID KORNBLAU

MARK CALIFANO

DOUGLAS W. HENKIN

MATTHEW A. LAFFERMAN

KAPLAN HECKER & FINK LLP

Attorney for Defendant Kwon

BY: MICHAEL FERRARA

CHRISTOPHER MOREL

DAVID E. PATTON

ANDREW CHESLEY

SEAN HECKER

Also Present:

Shadow Haywood, SEC Trial Assistant

Armando Aquino, Defense Trial Assistant

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(Trial resumed; jury not present)

THE COURT: I understand the defense has a motion.

MR. PATTON: Yes, your Honor. David Patton for Mr. Kwon. Yesterday during Mr. Kornblau's examination of Mr. Kol, Mr. Ferrara objected to some of the Court's questioning, and —

THE COURT: I think there were only two questions.

MR. PATTON: That's correct. And it's those questions that we think — your Honor overruled the objection. We think that the Court's questioning was highly problematic, and as such, we have a motion for a mistrial.

And I'll explain. I don't know if the Court would like me to — the questioning is at page 389. It sounds like the Court is familiar with what I'm discussing.

THE COURT: Yes.

MR. PATTON: The Court's question was:

"Let me ask you this, though, in the list of risks in this white paper or in any white paper that you've ever seen, have you seen one of the risks is that the offerers of this product will lie to you?"

The witness answered: "Never have I seen such a thing."

Mr. Ferrara interjected: "Your Honor."

The Court continued: "Excuse me.

"And if you had seen that, would you ever have

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1 invested in such a product?"

2 And the witness answered: "Most definitely not."

3 Mr. Ferrara objected and the Court overruled it.

4 So our objection, the pieces of this that we found
5 objectionable, obviously, the Court may ask witnesses
6 questions, may do so to clarify points that may be confusing.
7 And there are certainly issues in this case that can use
8 clarifying, but we don't believe this question was clarifying.
9 I don't think it could be perceived by the jurors as a genuine
10 search for information. I don't think anybody thinks any
11 agreement has a clause in it that says beware of the risk that
12 I may lie to you.

13 So we think instead it was surely perceived as the
14 Court injecting what is, in essence, the SEC's view of the
15 case. I think we would have objected to the question even if
16 the SEC were asking it, but it's even more problematic when it
17 comes from the bench. And it, in front of the jury, appears to
18 pit us against the Court.

19 I'll take the first piece of that first, which is
20 just, regardless of who might have asked that question, that it
21 would be problematic. And here I'm referring to a case Saint
22 Lawrence. This is *United States v. — sorry, Lawrence, United*
23 *States v. Lawrence*, 767 F.App'x 77 (2019). This is a Second
24 Circuit case reviewing Judge Seibel's instruction to a jury —
25 well, let me back up.

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1 Throughout the trial, the questioning had proceeded in
2 a fraud case along the lines of hypotheticals that if you
3 learned that there was an intentional lie or if you learned
4 that somebody had intentionally lied to you, would you have
5 done this, similar to some of the questioning we've had here.
6 And Judge Seibel had allowed that initially but then changed
7 course.

8 On the ninth day of testimony, the district court
9 raised the issue of whether such testimony could have the
10 effect of suggesting that any false statement made
11 intentionally would automatically be material. After overnight
12 briefing from the parties, the district court struck the
13 testimony and instructed the jury not to consider questions
14 along the lines of if you learned that . . . there was an
15 intentional lie or if you learned that somebody had
16 intentionally lied to you, and the Second Circuit found that
17 that curative instruction was sufficient.

18 But as problematic as that line of questioning is,
19 when it's coming from a place the jury surely expects it to
20 come from, which is opposing counsel, here, having it come from
21 the bench, really does suggest that the Court is adopting that
22 viewpoint. And here I would refer to the Second Circuit
23 opinion in *Rivas v. Brattesani*, and this is 94 F.3d 802 (1996).
24 And there the Court reversed in a civil case, an excessive use
25 of force case, based on judicial questioning. And in doing

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1 so — so one of the questions was the Court questioning a
2 police officer, where there was some credibility issues, and
3 the Court asked: "So that your memo book becomes a fraud that
4 you make up at the end of the day?"

5 "Objection, objection to the characterization."

6 The Court clarified: "Is the memo book made up at the
7 end of the day?"

8 And the witness denied it: "No, your Honor, it's made
9 up right after I get back into the car."

10 And in reversing, the court held: "Our view in this
11 regard is particularly influenced by the fact that in this
12 case, due to the sharply conflicting testimony of plaintiffs
13 and defendants, the court's use of the word 'fraud' in his
14 questioning of Brattesani was potentially fatal to defendants'
15 case."

16 And likewise here, the Court using the word "lie," I
17 think that's, obviously, one of the ultimate questions here is
18 whether, in fact, Mr. Kwon or the company lied. And so to use
19 what is, in part, anyway, leaving aside the materiality
20 question that I raised in the case involving Judge Seibel, but
21 certainly whether or not there were false statements and
22 whether or not there was a lie is a big part of the case.

23 And lastly, I would just say on that score, the Second
24 Circuit has long talked about how much influence judges'
25 comments can have on a jury as compared to the parties. And so

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1 now I'm talking about *U.S. v. Grunberger*, which is a 1970
2 Second Circuit case but has been cited over the years. That's
3 at 431 F.2d 1062, and here I'm reading at 1067:

4 "As a result of the court's varying style of
5 interrogating the prosecution's prime witness and the
6 defendant, the jury might have received the impression that the
7 judge believed Berger's version of the facts to be the most
8 plausible of the two versions. As has often been said, the
9 influence of the trial judge on the jury is necessarily and
10 properly of great weight, and his lightest word or intimation
11 is received with deference and may prove controlling."

12 And it goes on to say: "Moreover, instructions given
13 in the charge to the jury that they are the sole judges of the
14 credibility of the witnesses cannot remove the impression so
15 created."

16 So that's why we feel compelled to move for a
17 mistrial, your Honor.

18 THE COURT: All right. Thank you.

19 The motion is denied. In the Court's view, it borders
20 on the frivolous, and let me tell you why.

21 First, it is important for any judge to make sure that
22 issues are clarified for the jury and that the matter and the
23 case moves with expedition and focus. In this case, the Court
24 has been very distressed that the three witnesses who have so
25 far testified, three investors, whose testimony, if properly

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1 focused, in the Court's view, would have taken no more than a
2 half-hour apiece, probably less, has taken many hours from each
3 side. And just to illustrate the point, this is a case about
4 lying, and the defense from the very outset said that, although
5 materiality was involved, its main defense was that there were
6 no lies. So that's the issue for the jury.

7 The SEC, in its direct of these witnesses, in the
8 Court's view, should have therefore more or less limited itself
9 to saying: Did you invest in Terraform? Did you receive
10 information from Terraform? What was it? And then focus on
11 the specific items that the SEC says were the lies. If they
12 were affirmative lies, just said, Was that important to you?
13 If they were lies that are alleged to be misleading in nature,
14 then the question would have been, What was your understanding
15 of what was being said in that representation? And that would
16 have been it.

17 Then defense counsel should have pointed out that the
18 witnesses had no personal knowledge of whether these were lies
19 or not. That would have been something quite relevant for the
20 jury to know. That question was never put. And then to the
21 extent that materiality was involved, could have explored why
22 or why not the particular representations were or were not
23 important.

24 Instead what we saw from both sides — but, frankly,
25 particularly from the defense — was a series of irrelevancies

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1 and smoke screens. There was all this stuff that went on for
2 hours about how every investment involves some risk. So what?
3 How does that relate to any issue in the case? The specific
4 representation, one of the two that the SEC is focusing on, is
5 that a representation was made that investment in Terraform
6 would be at reduced risk through the algorithm and its
7 implementation. But instead we had all sorts of stuff about
8 supply and demand. We had all sorts of stuff that — about
9 other risks that were disclosed. This was, at best, very
10 tangentially relevant. And the Court, therefore, felt an
11 obligation and will continue to feel an obligation to make sure
12 that the jury is focused on the real issues in the case, which
13 is why I put the questions I did.

14 Excuse me. Sit down, counsel. I'm not through.

15 Now, the Court by its questions — which actually I
16 think were similar to questions that the SEC had put to
17 Mr. Revsin on rebuttal — but, in any event, the Court, in its
18 questions, was simply trying to refocus the jury on the issue
19 in the case, and I think that's all that was implicit or
20 explicit. I always give a charge as part of my final charge to
21 the jury that the Court has no opinion of the merits of the
22 case, that's their job, and that my questions were only
23 intended to clarify matters or to expedite the proceedings, in
24 this particular instance, both.

25 But I'm happy, if the defense wants, to give that

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1 instruction right now to the jury so the jury is under no
2 misimpression, but I don't think they could be. I think what
3 we did see was a long series of total irrelevancies or
4 marginally relevant inquiries from the defense. And if I
5 weren't such fans of the defense lawyers, I would say that the
6 inference could be drawn that it was an attempt to mislead the
7 jury and refocus them from the actual issues in the case to
8 issues that are not in the case.

9 Now, I've tried very hard over the last two days to,
10 if anything, err on the side of being receptive to defense
11 assertions. So, for example, I precluded the SEC from making
12 the argument that the failure to register was itself part of
13 the fraud, even though the SEC had meaningful arguments to that
14 effect. I precluded the SEC from arguing that Mr. Do Kwon was
15 responsible for his absence from this trial, even though I
16 think there are substantial arguments to that effect. I've
17 allowed the defense to include in the deposition of the
18 30(b)(6) witness material changes disguised as errata, even
19 though I think there were strong arguments for keeping them out
20 in the case of a 30(b)(6) witness, and so forth.

21 So I'm quite taken aback when a simple couple of
22 questions from the Court designed just to focus the jury on the
23 issue that involves these particular witnesses should be met
24 with this motion. But I respect the right of defense counsel
25 to make any motion they want, however frivolous it may be, and

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1 this one is denied.

2 There's some other business — yes.

3 MR. PELLEGRINO: Your Honor, if I may, Louis
4 Pellegrino for Terraform. It wasn't made clear at the outset.
5 We didn't have a chance to rise. I just need to make clear for
6 the record that Terraform defendants join in Mr. Patton's
7 motion.

8 THE COURT: I understand that.

9 MR. PATTON: Just two things.

10 THE COURT: By the way, in the future I'm not going to
11 allow a lot of that with questioning that occurred with these
12 witnesses. Now, it may not come up with other witnesses, but
13 the SEC did not object, and that's why I did not intervene
14 sooner, but it was getting just totally out of hand. One
15 irrelevant question after another.

16 MR. PATTON: Just on the broader point, your Honor, I
17 think that that line of questioning is really vital to
18 defending against very specific claims that the SEC has made
19 and included in the pretrial order. So, I mean, there are a
20 lot of statements, so I'm not going to go through all of the
21 ones it's relevant to. But some that really stand out, these
22 are quotes that the SEC is claiming are false.

23 THE COURT: No, that's what we're — my recollection
24 is that's what we're going to do this morning is go through
25 each of them and see exactly which ones they're pursuing. I

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1 thought that's what we had arranged.

2 MR. PATTON: That would be terrific, your Honor. We
3 asked the SEC last night if there were any that they were
4 withdrawing or to ask them for further explanation about why
5 they thought some of these were false.

6 THE COURT: I don't want to limit my criticism, since
7 I'm on a roll, to the defense. I'm amazed that the SEC with
8 these investor witnesses hasn't said to them specifically: OK.
9 You've told us now what you saw that Terraform had said to you
10 or written to you or published, or whatever. Now, focusing on
11 X, was that important to you? But instead we just had a sort
12 of catchall of things.

13 And the SEC stated in its opening statement, as stated
14 throughout this case, that it's essentially making two
15 assertions of fraud. One is that the investor in Terraform was
16 being assured that while no investment is risk-free, of course,
17 in this case the risk had been reduced through an algorithm
18 operating in a particular way, which the SEC alleges was false.
19 And the second was that the investor was told that the
20 investment — excuse me, that the Terraform platform was
21 already being so successful that another important company,
22 Chai, was utilizing it, and that was false.

23 I don't think they have changed from that, but,
24 certainly, I want more focus from the SEC on that. And in my
25 wild dreams, I would like to think that defense counsel might

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1 want to focus on the issues in the case as well.

2 MR. PATTON: Your Honor, could I just, as a broader
3 point in terms of what the SEC's position was on opening, their
4 headline-grabbing quote was "this was a house of cards," and
5 they actually used the term "risk free," not reduced risk, and
6 they did that through their first witness, too, who said I
7 thought this was risk free. So they have gone well beyond
8 saying that the problem had to do with reduced risk. They've
9 gone well beyond that. They've described Terraform Labs as a
10 house of cards, and a lot of —

11 THE COURT: Nothing that counsel says in openings is
12 evidence. I've already told the jury that.

13 MR. PATTON: Sure. But it goes to what their position
14 is, and it's aligned with a whole lot of statements that I
15 understand we're going to go through, but that do go well
16 beyond —

17 THE COURT: The point is there's a huge difference
18 under any — if the defense justification for spending hours,
19 literally hours, on questions about various risks was that
20 there's always some risk to every investment. That could have
21 been done with one question: Isn't it true, Mr. Investor —
22 and that could have been a question put to each of the three
23 investors. I don't believe it was — that no investment is
24 risk free? But that wasn't where you went. You went through,
25 you and your colleagues, through all sorts of stuff about how

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1 supply and demand operate, how in this situation such and such
2 could occur, in that situation such and such could occur,
3 whereas the issue, so far as risk is concerned, is was it
4 falsely represented that risk was materially reduced or was it
5 not; or as you said in your opening, was that not the
6 representation, or if it was, was it a truthful representation?

7 MR. PATTON: If I may, your Honor, just one very
8 simple example of this among the many quotes. One of the
9 quotes that the SEC claims is false is "the protocol will keep
10 arb opportunities open. Even if the incentives to do so are
11 dislocated during ephemeral market turmoil, the incentives
12 realigns and the system heals." They're claiming that's a
13 false statement, and I think that does require — I don't think
14 we've belabored this beyond what is necessary, but I do think
15 that does require some exploration of what Terraform said and
16 what Do Kwon said.

17 THE COURT: Again, I find this really remarkable
18 because at your request I required them very shortly before
19 trial, because the request was only made very shortly before
20 trial, to spend several days of time that I'm sure was very
21 valuable to them for other reasons to amend the pretrial
22 consent order to specify exactly what they were claiming was
23 false.

24 I expected, indeed, I think it was almost incumbent on
25 you to say we see no basis for number three, number seven,

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1 number nine being assertions, and so what we're about to do
2 would have done before the trial began or during the
3 discussions of motions *in limine*. And now you are saying,
4 well, we chose not to do that then. We only asked for it last
5 night, so now we're asking for it.

6 MR. PATTON: So I guess I would respond in two ways:
7 One, in the fairly voluminous briefings, summary judgment and
8 otherwise, I think we did join issue on a lot of these issue,
9 but —

10 THE COURT: All the more reason, if they included
11 something in their pretrial consent order that you believe is
12 contrary to what the Court held on summary judgment — I don't
13 think that necessarily is true — but if it is true, then that
14 would have been an easy motion to make: Judge, strike that one
15 because it was already disposed of in summary judgment.

16 MR. PATTON: I don't know that this specific issue was
17 disposed of, but it's certainly the SEC making the factual
18 assertion this claim was false, and I think we're permitted to
19 join on that issue and to say, no, it wasn't false. Here's
20 exactly what Terraform and Do were saying about the incentives
21 created by the algorithm. And to do that, I think there has to
22 be some very basic understanding of how those incentives work.
23 That was my only point, your Honor.

24 THE COURT: Anything the SEC wanted to say?

25 MR. CONNOR: Yes, your Honor. We join with the

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1 Court's. We think this — we join with the Court and think
2 that mistrial motion is entirely meritless.

3 I would like to address some of the statements in the
4 pretrial order. Our pretrial order was very specific and was
5 tied to the statements that we put forward in our summary
6 judgment papers. On the Jump fraud scheme, we have five
7 statements made on five specific days, and we have identified
8 exactly what we say is false and misleading. None of those
9 have to do with that there is absolutely no risk whatsoever
10 with any investment. None of those have to do with the depeg
11 of the British pound, which was the subject of a bunch of
12 questions in the cross-examination. So we think the pretrial
13 consent order in which we laid out exactly what was false,
14 which was backed up by our summary judgment briefing, has given
15 the defense counsel all the notice they need to challenge these
16 false and misleading statements. The questions to the
17 witnesses, though, were just not related to any of these false
18 and misleading statements.

19 I think the other point that I think bears repeating
20 is the SEC's fraud claim in the context of these statements are
21 that Terraform Labs did not disclose to the public the secret
22 deal that they struck with Jump. So on the next day when
23 they're saying that the algorithm healed and they're not
24 mentioning the fact that it healed because of a deal with Jump,
25 that's what's misleading, and none of their questions have been

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1 about that which is actually the essence of the fraud.

2 THE COURT: I think it's quite correct, and, again,
3 was part of my motivation in interrupting, that they never
4 joined with the major assertions being made by the SEC. Even
5 if I accepted, which I don't think I do, the claims, as being
6 made by defense counsel, that this was responsive to one
7 particular representation mentioned in the pretrial order, to
8 spend hours on stuff related to that where the jury's already
9 been told from not only counsel but from the Court in its
10 preliminary instruction, here are the basic issues, and just
11 ignore that, I think the nicest thing I can say about it is
12 that it's a royal waste of time. It might also be construed as
13 a smoke screen. It might also be construed as an attempt to
14 confuse the jury. And the Court is not going to allow any of
15 that to occur.

16 MR. CONNOR: The other point I'll make, your Honor, is
17 this notion of an automatic self-healing, that is not something
18 the SEC has said. That is what Mr. Kwon said. This is a
19 specific misstatement that we have in there. So that's why the
20 notion that they're saying that this was not automatic
21 self-healing is contrary to what Mr. Kwon actually said.

22 As far as Tribe's misreps, I don't think we need to go
23 into those. Those are very specific. On specific days here is
24 what he said. He said that Chai settled on the Terra
25 blockchain. Our is that is absolutely not true, so that's the

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1 basis of our fraud claims with respect to Chai.

2 MR. PATTON: Your Honor, can I just address —

3 THE COURT: I thought your colleague also had risen.
4 I don't know whether he had something to say.

5 MR. PELLEGRINO: I have a housekeeping later, measured
6 later, your Honor, but let's resolve this.

7 MR. PATTON: I want to be clear. The one statement I
8 gave that the SEC claims is false is one of many. Can I give
9 one other example that I think really goes to the heart of this
10 as well?

11 The SEC again, in its list of statements they claim
12 are false or misleading, they screenshotted a tweet from
13 someone else that Do Kwon then responded to, and what he's —
14 the screenshot they give is a critic tweeting: "The TerraUST
15 stablecoin could collapse in a bank run effect. UST is backed
16 by an endogenous collateral Luna. Current Luna market cap has
17 fallen to arguably less than outstanding UST. We are now in a
18 dangerous spiral. As users panic out of UST, this reinforces
19 the Luna crash further."

20 And Do's response that they're claiming is false is:
21 "The death spiral of a bank run applied to Terra's seigniorage
22 shares-style money policy is also not an apples-to-apples
23 comparison."

24 So they're claiming that's false. So we need to — we
25 need to be able to counter that. That requires explaining what

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1 a death spiral is, that it was being publicly discussed, and
2 that he was explaining it's not quite the same as a bank death
3 spiral.

4 THE COURT: Again, I'm mystified by what you're
5 saying. The term "death spiral" is a term that has many
6 meanings, even in the financial world, and so to ask a witness
7 what it means is neither here nor there when the representation
8 is that when Mr. Kwon and the person he was messaging or
9 interfacing with referred to it. So the relevant inquiry would
10 be either to put that exhibit into evidence and make arguments
11 about that, regardless of any witness, or if there's a witness
12 who can testify about it, such as some of the witnesses we may
13 hear from in the next few days, put that before it. But to ask
14 an investor what is meant by a death spiral and isn't — would
15 you describe if X, Y, and Z happened that that's a death spiral
16 is a total irrelevance.

17 MR. PATTON: But, your Honor, if the SEC is
18 claiming —

19 THE COURT: And at the age of 80, of course, I'm very
20 much focused on words like "death spiral."

21 MR. PATTON: To the extent that the SEC, though, is
22 claiming that Do's use of that term is false or misleading and
23 his very public statements —

24 THE COURT: In context.

25 MR. PATTON: Absolutely.

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1 THE COURT: But that was not — these investors were
2 not privy to that exchange.

3 MR. PATTON: But they're under — but investors'
4 understanding of what Do is saying when he's talking about the
5 possibility of a death spiral goes to the heart of whether or
6 not these were material, whether they were false or misleading
7 in context of all the things that Do and Terra were talking
8 about in this space. It just strikes me —

9 THE COURT: I'm not sure that that was — that
10 particular exchange was showed to any investor who testified
11 here.

12 MR. PATTON: We don't know what's going to be shown
13 tomorrow, which statements there — they have —

14 THE COURT: No, no, no. So this is another problem
15 I've had with a lot of questions from the defense:

16 Have you ever seen this article?

17 Well, I don't think I did.

18 Well, how could you not know that the mainstream media
19 — that was the term used by your colleague when he was
20 referring, in fact, to a quote from a Canadian professor that
21 was hidden deep in a *Wall Street Journal* article. Now it was
22 the mainstream media has revealed this risk. Both those
23 questions, once he had said he hadn't seen the article, were
24 completely irrelevant. Now, I do fault the SEC for not
25 objecting. Sometimes they did. But that's the kind of thing

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1 that went on and on and on.

2 MR. PATTON: Your Honor, I don't think somebody who's
3 at a very wealthy institutional organization like a venture
4 capital fund or now we have somebody from Galaxy, the single
5 biggest player in the crypto space, saying you did diligence on
6 these things and to explore the fact that Terra was out there
7 with all sorts — engaging with all sorts of discussions about
8 risks, and these discussions were out there in places like *The*
9 *Wall Street Journal*, and Terraform and Do Kwon were engaging
10 with those criticisms, to have somebody at Galaxy —

11 THE COURT: I'm sorry, that's not in accordance with
12 something as basic as the Rules of Evidence. If he says he
13 hasn't seen the article, wasn't a question of not being
14 refreshed or anything like that, he hasn't seen the article,
15 that's the end of it.

16 MR. PATTON: And I think —

17 THE COURT: If you want to present it to another
18 witness, fine. You tried it, if I recall, your colleagues,
19 with all three witnesses.

20 MR. PATTON: Your Honor, we've obviously argued that
21 point before. I think that was the end of it. So I don't
22 think we've belabored things where your Honor has sustained an
23 objection to going beyond that.

24 THE COURT: Well, OK. I'm now concerned it's already
25 9:45, so I think we need to bring in the jury, finish with the

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1 witness who is on the stand, and then we'll see where we go
2 from there.

3 So bring in the jury and bring in the witness.

4 MR. PATTON: Your Honor, could we at some point — we
5 don't have to do it right at this moment — but at another
6 break could we perhaps follow up with your Court on the
7 possibility of a curative instruction?

8 THE COURT: Sure. I'm happy to do it right now with
9 the jury if you want me to, but if you don't want me to, that's
10 fine.

11 MR. PATTON: I think it would be easier if we had a
12 concrete proposal for your Honor.

13 THE COURT: I'll tell you the instruction I always
14 give, which is that, ladies and gentlemen, you've heard my
15 questions. Please be aware I have no opinion about any issue
16 in this case. My questions are just designed for clarification
17 or to move things forward.

18 MR. PATTON: We would certainly appreciate that, your
19 Honor, but I think we might also want something that's more
20 specific to the issue we raised.

21 THE COURT: All right. Well, I'll wait to see what
22 you come up with.

23 MR. PATTON: Thank you, your Honor.

24 (Continued on next page)

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Kol - Cross

1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen.

3 Please be seated.

4 Thank you once again for your promptness. Counsel and
5 I were having so much fun discussing other matters that we
6 barely could tear ourselves away. But we're ready to continue
7 now, so let's get the witness on the stand.

8 Go ahead.

9 MR. KORNBLAU: Thank you, your Honor.

10 JONATHAN MOSHE KOL, resumed.

11 CROSS-EXAMINATION CONTINUED

12 BY MR. KORNBLAU:

13 Q. Good morning, Mr. Kol.

14 A. Good morning.

15 Q. We haven't spoken since you finished testifying yesterday,
16 is that right?

17 A. That's right.

18 Q. Did you speak to the SEC?

19 A. No.

20 Q. As part of your due diligence at Galaxy, Mr. Kol, did you
21 listen to Do Kwon speak on any podcasts?

22 A. I can't recall if they were podcasts specifically, but
23 certainly there were things that were similar to a podcast.
24 Maybe a YouTube — YouTube talk or a live stream or something
25 of that sort.

O3RHSec1

Kol - Cross

1 Q. Just a quick question. Do you remember any podcasts or
2 YouTube with gentleman named Anthony Pompliano?

3 A. Yes. But that I can tell you distinctly I very unlikely to
4 have listened to.

5 Q. Did not. OK. Thank you.

6 We spent some time yesterday, do you remember,
7 Mr. Kol, talking about the white paper from 2018?

8 A. Yes.

9 Q. And we're not going to go over a lot of details there
10 again, but I think you said yesterday that at that time that
11 was before the launch of the Terra blockchain, is that correct?

12 A. Correct.

13 Q. And so would it be fair to describe that white paper as a
14 proposal?

15 A. Sort of. It is a — it's a description of what they're
16 going to build. So I think you can consider it a proposal.

17 Q. I guess I want to go through quickly.

18 Do you recall they actually used the word "we propose"
19 in the white paper?

20 A. Yes. It's a standard kind of academic language where the
21 author says we propose this construction to do these things.

22 Q. Thank you.

23 All right. Now, in your direct testimony, the SEC
24 showed you the memo that you wrote at Galaxy when you were
25 recommending that Galaxy purchase Luna, correct? Do I have

O3RHSec1

Kol - Cross

1 that right?

2 A. Correct.

3 Q. And that is Plaintiff's Exhibit 8.

4 Can we, Mr. Aquino, just bring that up. It's already
5 in evidence.

6 Is this that memo?

7 A. Yes.

8 Q. Again, I'm going to try to just move quickly through this.

9 If we go to page 8, there was a description — you had
10 a description of risks involving the purchase of Luna, is that
11 right?

12 A. Yes.

13 Q. And if you look under the paragraph there that says "Luna
14 supply expansion risk," there's a reference to a risk of a
15 downward spiral in Luna price. Do you see that?

16 A. Yes.

17 Q. Is that the same risk we were discussing yesterday in the
18 2018 white paper?

19 A. We discussed a couple, but I would say this is in line with
20 the risk outlined in the white paper.

21 Q. And that was presented to Mr. Novagratz when he made the
22 decision to buy Luna on behalf of Galaxy, isn't that correct?

23 A. Correct.

24 Q. OK. Then, again, I don't want to spend a lot of time on
25 this, but the next paragraph, Luna liquidity risk, you wrote in

O3RHSec1

Kol - Cross

1 your memo that there was a risk if users are not able to easily
2 sell Luna received for stablecoin deposits, the peg mechanism
3 is at risk.

4 You wrote that, right?

5 A. Yes.

6 Q. Can you just explain briefly what that means for everyone
7 so we can understand it and in maybe simple terms.

8 A. Of course. As we talked about yesterday, there was this
9 mechanism, this system, what we call the algorithm. And for it
10 to be able to function, it does require that there will be
11 liquidity in these assets, because if you — if you give it one
12 thing and it gives you another and its — its success at the
13 task of maintaining the peg depends on your doing that or some
14 agent doing that, then you need to be able to sell the thing
15 that it gives to you. And that really does depend on there
16 being a market for it.

17 So that's what I mean by liquidity, is there someone
18 who is willing to buy this thing for you? And so it was a risk
19 that as someone who was observing this as a perspective
20 investment really needed to understand.

21 Q. Thank you.

22 Mr. Aquino, can we put up for identification
23 Plaintiff's Exhibit P-9.

24 And while you're doing that, Mr. Kol, was there an
25 agreement signed by Terraform Labs and Galaxy regarding the

O3RHSec1

Kol - Cross

1 purchase of the Luna tokens?

2 A. Yes.

3 Q. And if we can just — you see the front page of this
4 document that I'm showing you?

5 A. Yes.

6 MR. KORNBLAU: And if, Mr. Aquino, again — don't read
7 anything in it yet.

8 Mr. Aquino, if you can just turn to the very last page
9 that shows the signatures.

10 Q. Do you see that, Mr. Kol?

11 A. Yes.

12 Q. Is this the — what is this?

13 A. This is the — what's known as the signature block.

14 Q. The whole document, what is the document?

15 A. This is the document that outlines the terms of the
16 investment. It in a general sense talks about how much the
17 purchaser will be purchasing, at what price, and what the
18 seller is obliged to give to the purchaser.

19 MR. KORNBLAU: OK. Again, we're not going to spend
20 much time on this document, but if we can go to, Mr. Aquino,
21 it's the page that's numbered 23. I don't know what the PDF
22 number is. Says "Schedule 5" at the top.

23 MS. MEEHAN: Objection, your Honor. This document is
24 not evidence.

25 MR. KORNBLAU: Excuse me. You're right. I offer it

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Kol - Cross

1 in evidence.

2 MS. MEEHAN: No objection to it coming in.

3 THE COURT: Received.

4 MR. KORNBLAU: Apologies. Thank you for that.

5 (Plaintiff's Exhibit 9 received in evidence)

6 BY MR. KORNBLAU:

7 Q. So there's a list of risk factors. It begins on page 23
8 and it goes all the way to page 29.

9 Yeah, we can publish it to the jury, please. We can
10 start on page 23.

11 Getting sloppy. I had this yesterday.

12 All right. Can the jury — is it now published? OK.
13 Thank you.

14 So starting on page 23, Mr. Kol, risk factors, you see
15 that, Schedule 5?

16 A. Yes.

17 MR. KORNBLAU: If we click through, Mr. Aquino.

18 Q. They go all the way to page 29, is that correct?

19 A. Correct.

20 Q. So Galaxy was aware of the details of this document, is
21 that fair?

22 A. Yes.

23 Q. And so just to wrap up, so when Galaxy made the decision to
24 buy the \$4 million of Luna, it was aware of the risks in your
25 memo, in the sale agreement, the results of your diligence. It

O3RHSec1

Kol - Redirect

1 took that all into account, correct, when it made that
2 decision, Galaxy?

3 A. That is correct.

4 Q. And would it be fair to say that the judgment was that the
5 potential upside outweighed the risks?

6 A. That is correct.

7 MR. KORNBLAU: No further questions, your Honor.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY MS. MEEHAN:

11 Q. Just very briefly, your Honor.

12 Mr. Kol, yesterday my adversary, Mr. Kornblau, asked
13 you a number of questions about Defense Exhibit No. 4.

14 Mr. Haywood, if you could please pull that up for the
15 witness and the jury.

16 And, Mr. Kol, if we could just direct you to page 15
17 of that document. It's Section 4.3.

18 If you recall, Mr. Kol, Mr. Kornblau asked you a
19 number of questions about what's contained in the first
20 paragraph here, is that right?

21 A. That's right.

22 Q. But what he did not ask you about was what follows in the
23 second paragraph here, right?

24 A. I believe so.

25 Q. Could you please read the first sentence of that second

O3RHSec1

Kol - Redirect

1 paragraph for me, please.

2 A. "As argued in the earlier sections, the stability reserve
3 is guaranteed to maintain a reserve ratio of at least 1 almost
4 consistently."

5 Q. And if you could just continue through the next two or
6 three sentences ending at "Terra's collateral."

7 A. "A price shock would trigger a strong transaction fee hike
8 that would offer significantly increased cash flow to Luna
9 holders for a predictable period of time. This guarantee is
10 strengthened by the nature of Terra's collateral."

11 Q. Thank you.

12 And if I could just turn — direct your attention to
13 page 19. There's a section there that's called "Conclusion."
14 Is this section also something that you would have read when
15 you read this document, Mr. Kol?

16 A. Absolutely.

17 Q. And can you just read for me there the first paragraph of
18 the conclusion of this 2018 white paper.

19 A. "Terra is the first price-stable cryptocurrency that can
20 make a guarantee of solvency with a reserve made up of
21 decentralized assets. The price stability of such a regime
22 cannot be taken away by centralized actors nor attacked by
23 speculators. Terra is an improvement on both fiat currencies
24 and Bitcoin, since it is safe from both speculative volatility
25 and political pollution of its monetary policy."

O3RHSec1

Kol - Recross

1 Q. Thank you.

2 You can take that exhibit down. And, Mr. Haywood, if
3 you could pull up Plaintiff's Exhibit 9.

4 Looking at page 23, the section that Mr. Kornblau
5 directed you to which discussed the risk factors, and if you
6 could just take a minute to review those again, Mr. Kol.

7 Do the risk factors included here include Terraform
8 not being truthful to investors?

9 A. No.

10 MR. FERRARA: Objection.

11 THE COURT: Overruled.

12 MS. MEEHAN: No further questions, your Honor.

13 MR. KORNBLAU: Your Honor, maybe two questions on
14 redirect, if I may — recross, if I may?

15 THE COURT: Go ahead.

16 MR. KORNBLAU: Sorry.

17 RECROSS EXAMINATION

18 BY MR. KORNBLAU:

19 Q. Mr. Kol, the 2018 white paper, that was a proposal,
20 correct?

21 A. As we discussed before, I think you can say that.

22 Q. Yeah. And the counsel from the SEC pointed you to some
23 paragraphs that she just read, and I won't go over those again,
24 but in — two years later in 2020 when you recommended to
25 Galaxy to purchase \$4 million of Luna, you still thought there

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Kol - Recross

1 was a risk of this downward spiral, correct?

2 A. Yes.

3 Q. And that was clear, right?

4 A. Yes.

5 THE COURT: Anything else?

6 MR. KORNBLAU: That's all. Thank you.

7 THE COURT: No, anything else from the SEC?

8 MS. MEEHAN: No, your Honor.

9 THE COURT: So just so I'm clear and the jury is
10 clear, there are relatively different levels of risk, yes?
11 Some cryptocurrency investments are highly volatile, others are
12 more stable, yes?

13 MR. FERRARA: Objection, your Honor.

14 THE COURT: Overruled.

15 Is that right?

16 THE WITNESS: Yes.

17 THE COURT: And that's why you have a term
18 "stablecoin," yes?

19 MR. FERRARA: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: Yes.

22 THE COURT: What is meant by stablecoin?

23 THE WITNESS: Generally, it is meant that you have an
24 asset here that is meant to keep a value stable with some
25 relative sense of that meaning that any deviations it has from

O3RHSec1

Kol - Recross

1 what is meant to be the stable value, whether it's \$1, one
2 Korean won, that those deviations should be short-lived. That,
3 for all intents and purposes, the value of that asset should
4 revolve around a certain expected number.

5 THE COURT: All right. Anything else? I'm sorry?

6 MS. MEEHAN: No, your Honor.

7 THE COURT: You may step down. Thank you very much.

8 (Witness excused)

9 THE COURT: Counsel, come to the sidebar.

10 (Continued on next page)

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Kol - Recross

1 (At sidebar)

2 THE COURT: My suggestion is we go forward with the
3 next witness and take up what we were going to originally take
4 up this morning about the stuff in the pretrial consent order
5 later today. Is that agreeable?

6 MR. CONNOR: Yes.

7 MR. KORNBLAU: I didn't hear you. To go forward with
8 the witness now?

9 MR. CONNOR: The next is going to be the video of the
10 corporate designee.

11 (Continued on next page)

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Kol - Recross

1 (In open court; jurors present)

2 MR. KORNBLAU: Your Honor, can I have just a brief
3 moment to confer about what's coming next?

4 THE COURT: Yes.

5 MR. KORNBLAU: I apologize.

6 (Counsel confer)

7 MR. KORNBLAU: Thank you, your Honor.

8 MR. CONNOR: Your Honor, the SEC calls as its next
9 witness Terraform's corporate designee Ashwin Mathialagan. He
10 will be testifying by video.

11 THE COURT: OK.

12 MR. CONNOR: Before he takes the stand, your Honor, we
13 have three exhibits that are discussed in his video testimony
14 that we would offer into evidence at this time. The first is
15 PX 137. I understand there's no objection to that exhibit, so
16 we would move to admit that document.

17 THE COURT: Received.

18 MR. KORNBLAU: No objection.

19 (Plaintiff's Exhibit 137 received in evidence)

20 MR. CONNOR: The second document is PX 143, which is a
21 conversation between Terraform employees. We would offer that
22 into evidence as well.

23 MR. KORNBLAU: Object on relevance grounds, your
24 Honor.

25 THE COURT: I can't tell yet, but I'll reserve on

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Kol - Recross

1 that. When it is referenced, if I feel it's irrelevant, I'll
2 strike it then.

3 MR. CONNOR: I'll note, your Honor, the objections
4 have already been resolved on the 30(b)(6) testimony, and this
5 document was referenced in that testimony. I don't know that
6 relevance was an objection at that time.

7 THE COURT: OK.

8 MR. CONNOR: And the final document is PX 145, which
9 is similarly a conversation between Terraform employees that we
10 would also move into evidence.

11 MR. KORNBLAU: Same objection, your Honor, and there's
12 no requirements to state relevance objections at depositions.

13 THE COURT: That's correct. Defense counsel is
14 correct, but I can't really rule on that until I see how it's
15 being used. So I'll reserve ruling on it until I see it, and
16 then if I have to strike it, I will.

17 MR. CONNOR: Thank you, your Honor.

18 With the Court's permission, may we play the cued up
19 portions of the video testimony?

20 THE COURT: Yes. Yes.

21 So, ladies and gentlemen, sometimes witnesses are not
22 available for one reason or another. So you can treat this
23 just as if the witness were here.

24 Go ahead.

25 MR. KORNBLAU: And for that reason, your Honor, I

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Kol - Recross

1 guess we need to be able to object before the answer is stated.
2 So there's some awkwardness there with the video, but we'll do
3 the best we can.

4 THE COURT: OK. When there's objections stated, put
5 the video on hold at that moment so we can deal with the
6 objection.

7 (Video played)

8 THE COURT: Wait a minute. I'm sorry. Forgive me.
9 We need to have his name identified before we start the — just
10 state it for the record.

11 MR. CONNOR: Yes, your Honor, his name is Ashwin,
12 A-s-h-w-i-n, and his last name is Mathialagan, spelled
13 m-a-t-h-i-a-l-a-g-a-n.

14 THE COURT: I think all objections were previously
15 presented to the Court, so I don't think there's anything I
16 have to rule on in that regard.

17 MR. KORNBLAU: Only the exhibits, your Honor.

18 THE COURT: OK. Very good. Go ahead.

19 (Video played)

20 THE COURT: Hold.

21 So, ladies and gentlemen, let me explain that a little
22 bit more.

23 Before a trial begins, both sides can take the
24 testimony of witnesses, including witnesses from the other
25 side. These are called depositions. They occur not in a

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Kol - Recross

1 court, but they occur in an office. Questions are put, then if
2 the party wants to offer some of that testimony in evidence at
3 trial because the witness is not available because, like, he's
4 out of the country or something like that, then both sides
5 state their objections to me and I rule on them, and then
6 what's left is what you're about to see.

7 The 30(b)(6) witness — don't worry about these
8 numbers. This is just lawyer talk — but a 30(b)(6) witness is
9 different from other witnesses in that what he or she has to
10 say is binding on the company. So everything this witness says
11 is binding on Terraform. He is the representative of Terraform
12 for purposes of this. Now, that doesn't mean you have to
13 accept his testimony. That's up to you whether you accept it
14 or not. But it, in your consideration, can be treated as
15 statements of a company itself.

16 So go ahead.

17 (Video played)

18 (Continued on next page)

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O3RASEC2

(Video played)

MR. CONNOR: Your Honor, before the witness discusses this exhibit, we wanted to again offer PX 143a into evidence. It's a conversation with Do Kwon and another Terraform employee and I think the Court -- I have a copy here. I think the Court will find that the content is relevant. So we would ask it be admitted and that the (30)(b)(6) witness be allowed to speak about it.

MR. KORNBLAU: Your Honor, let me save you some effort. We don't object.

THE COURT: Very good. Received.

(Plaintiff's Exhibit 143a received in evidence)

(Video played)

MR. KORNBLAU: That wasn't designated, your Honor. We object to that section.

MR. CONNOR: Yes, your Honor. I think we did not intend to read that. So we can strike that answer. Thank you.

THE COURT: Okay. Stricken.

(Video played)

MR. KORNBLAU: Can we pause just for a sec.

THE COURT: Pause. Thank you.

MR. KORNBLAU: Your Honor, just to avoid confusion, would it be okay if I just stated that GiGi Kwon is not related to Do Kwon.

MR. CONNOR: Yes. And the SEC agrees.

O3RASEC2

1 THE COURT: That's fine. Thank you. Go ahead.

2 (Video played)

3 MS. LANDOW: Your Honor, there's an errata correction
4 here.

5 THE COURT: So let me explain to the jury what an
6 errata is, and then you can read it.

7 So after a deposition is taken, the witness gets a
8 chance to make corrections, and those are called errata. And
9 it's up to you whether you choose to accept his original
10 testimony or the change in the errata. That's entirely your
11 discretion, but you should consider both and make your
12 determination. So here there was an errata. Go ahead.

13 MS. LANDOW: The company does not know what regulatory
14 issue the reporter was referring to.

15 The reason: Consulted company records, which did not
16 provide a basis for the company's understanding of the
17 reporter's opinion.

18 THE COURT: Okay. Go ahead.

19 (Video played)

20 MS. LANDOW: There's a correction here.

21 THE COURT: Go ahead.

22 MS. LANDOW: Chai transactions were integrated with
23 the Terra blockchain in June 2019.

24 The reason: Closer review of Plaintiff's Exhibit 143b
25 deposition, Plaintiff's Exhibit 11, and blockchain transaction

O3RASEC2

1 data connected to Chai transactions.

2 THE COURT: Go ahead.

3 (Video played)

4 MS. LANDOW: Correction here. Chai transactions were
5 integrated with the Terra blockchain in June 2019.

6 Reason: Closer review of Plaintiff's Exhibit 143b,
7 deposition Exhibit 11, and blockchain transaction data
8 connected to Chai transactions.

9 (Video played)

10 MR. CONNOR: Your Honor, at this time before we get
11 into the substance of the documents, we wanted to move to admit
12 PX 145b, which is the translated version.

13 MR. KORNBLAU: No objection.

14 THE COURT: Received.

15 (Plaintiff's Exhibit 145b received in evidence)

16 (Video played)

17 MS. LANDOW: Your Honor, there's a correction here.

18 THE COURT: Go ahead.

19 MS. LANDOW: Chai transactions were integrated with
20 the Terra blockchain as of September 2019 as well.

21 The reason: Closer review of Plaintiff's Exhibit
22 143b, deposition Exhibit 11, and blockchain transaction data
23 connected to Chai transactions.

24 THE COURT: Okay.

25 (Video played)

O3RASEC2

1 THE COURT: Is that it?

2 MR. CONNOR: Yes. That's it, your Honor.

3 THE COURT: Very good. Why don't we give the jury
4 their mid-morning break at this time. We'll reconvene in 15
5 minutes.

6 (Continued on next page)

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O3RASEC2

(In open court; jury not present)

MR. KORNBLAU: Your Honor, your Honor may have items.
I just had one housekeeping matter.

THE COURT: Go ahead.

MR. KORNBLAU: I didn't want to interrupt you.

THE COURT: Go ahead.

MR. KORNBLAU: Your Honor did give an overview at the beginning about a 30(b)(6) deposition. We would request just for clarification to the jury to what they just saw, if the Court would also explain that when Mr. Mathialagan was testifying, he was basing his testimony on review of company records and that many of the relevant employees were no longer at the company.

THE COURT: Well, I thought he said repeatedly that he was basing it on relevant records, so I'm not sure what's added there.

MR. KORNBLAU: Just that -- it's not intuitively obvious, your Honor, I think to a juror that a (30)(b)(6) witness wouldn't have personal knowledge of the items.

THE COURT: Oh, okay. All right.

MR. KORNBLAU: Puts it in context --

THE COURT: I'll say something along those lines.

MR. FERRARA: And when your Honor does that, would it be possible, just because there are two parties here, that the (30)(b)(6) witness speaks for the company but not -- is not a

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1 representative of Mr. Do.

2 THE COURT: Okay.

3 MR. FERRARA: Thank you, your Honor.

4 THE COURT: So when they come back, remind me and
5 we'll do that right away while it's still fresh in their mind.

6 MR. KORNBLAU: Thank you.

7 THE COURT: Now, we didn't get to this morning, but we
8 need to get to now, the defense wants to go through the
9 specific statements that are in the pretrial consent order that
10 are alleged to be false to see, number one, whether there are
11 any that the SEC is no longer pursuing, and number two, whether
12 there's any that there's no basis for pursuing.

13 So I think we begin on page 17 of the pretrial consent
14 order.

15 MR. CONNOR: Your Honor, I apologize for interrupting.
16 Would it be okay if members of the SEC use the restroom? I
17 will be here addressing this, but other members would like to
18 use the restroom.

19 THE COURT: Generally impudent request, but okay. And
20 that goes for any members of the defense team that are not
21 involved in this discussion.

22 So on my own quick review of the first group of
23 statements that are listed under 4a, beginning on page 17 and
24 going onto page 18, there was some statements there that seem
25 to me just rhetorical. For example, Kwon stated the following:

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1 "It's interesting that cockroaches only come out when the night
2 is darkest."

3 Now, that might be challenged as inaccurate by any
4 person who resides in a New York apartment, but nevertheless, I
5 don't see why that is a false material statement.

6 MR. CONNOR: We agree, your Honor. And we are
7 offering this, the thrust of what the false statement is, is in
8 the summary. The rest, it's a 29-tweet thread. And it's all
9 in the same statements. These are not statements made
10 different days and different times. It's all a part of one
11 document.

12 So the thrust of the misleading nature of what we
13 allege here is that Kwon is saying that, you know, nobody could
14 believe that the growth could be manipulated, how the protocols
15 are responded, how none of the fundamentals have changed. And
16 our position is the fundamentals absolutely had changed because
17 Kwon at that time knew that the algorithm was not going to work
18 on its own and that he needed to strike a secret side deal with
19 Jump.

20 So that's sort of the nature of the misstatements
21 here. We're not saying each and every statement here is false
22 and misleading, but taken together in one document, these are
23 the false and misleading statements. And we tried to summarize
24 what, again, the thrust of it was in subparagraph (a).

25 MR. PATTON: Your Honor, I would just say that's not

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1 what's, until just now, been represented. And we asked them
2 again because the Court suggested we go back and do this, if
3 they were withdrawing any of these or if they could provide
4 further clarification and they declined.

5 THE COURT: Well, but now they have. That's why we're
6 having this discussion.

7 MR. PATTON: Agreed. But I just wonder -- I mean, I'm
8 happy to do this, but perhaps the SEC can take another look and
9 decide which of these --

10 THE COURT: I don't have any problem with giving both
11 of you a little more time as long as, number one, we continue
12 with the trial of the witnesses. And, number two, if a
13 question comes up, such as we talked about this morning, where
14 you think you have to ask a whole bunch of questions on cross
15 because of something that's here, that you then consult with
16 them right then and there before you put those questions to
17 make sure they're still pursuing that so that we don't waste
18 time, which was part of the problem I was concerned with.

19 MR. PATTON: Understood. I mean, your Honor is
20 obviously flagging why this is important to do. So maybe we
21 should just proceed. Because it is important for us to get
22 clarification on what they're saying is false.

23 THE COURT: Well, with respect to this paragraph,
24 basically what they just said was, if I understand it, is that
25 the statements they're pursuing as false are the statements

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1 that nothing has changed, when in fact, they say Kwon knew that
2 material things had changed, and that's why he needed to
3 involve Jump. Do I have that right?

4 MR. CONNOR: Yes, that's correct.

5 THE COURT: So --

6 MR. PATTON: So I guess then is the idea that none of
7 the bullet points are false statements that you're alleging?

8 MR. CONNOR: No, that's not correct. There are, I
9 mean, there is a bullet point that says, "is UST growth
10 manipulated by Terraform Labs." Nobody who has used Mirror
11 Anchor could believe this.

12 And we allege that in fact that is exactly what
13 Terraform Labs and Kwon were doing.

14 MR. PATTON: I guess my point is then you're saying
15 some of the bullet points are part of your claims and some are
16 not. So we're just seeking clarity on which of these many
17 statements is the SEC claiming are false.

18 MR. CONNOR: And, your Honor, we're happy to confer
19 with defense counsel at lunch break. I think it's important
20 though -- it's all part of one document, one statement. These
21 are not disbursed statements different days, different
22 documents. This is one document. So we're happy to confer
23 with defense counsel on a lunch break on that.

24 THE COURT: I mean, that's fine with me, subject to
25 the two limitations I just mentioned.

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1 MR. PATTON: That's fine, your Honor.

2 THE COURT: Very good.

3 MR. PELLEGRINO: Your Honor, if I may, it's very
4 quick.

5 THE COURT: Yeah.

6 MR. PELLEGRINO: As your Honor will recall, you
7 authorized discovery in London which was ongoing. Some
8 additional discovery came in --

9 THE COURT: That was only so you could have a nice
10 trip to London, no other reason.

11 MR. PELLEGRINO: It was lovely, but cold, your Honor.

12 So some additional discovery has come in, and
13 according to the high court in London, that needs to be served
14 on the Court and the SEC with a deadline of today. It's
15 protected. We're not seeking to admit anything. The parties
16 will look at it and deal with anything they need to deal with
17 it. But if we may submit to your e-mail address and serve the
18 SEC, and then it should be protected under the amended
19 protective order until such time as people look at it and
20 decide if there's anything to do with it in this proceeding or
21 any later proceeding.

22 THE COURT: That's fine. This is from English
23 witnesses?

24 MR. PELLEGRINO: Yes, your Honor. They were English
25 witnesses, but it was a U.S. style deposition.

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1 THE COURT: I'm wondering if it's in "English
2 English," do I need an interpreter?

3 MR. PELLEGRINO: Your Honor, it's in code, computer
4 code, so someone will have to interpret it.

5 THE COURT: Very good. Okay I think we can take a
6 five-minute break and then we'll resume.

7 MR. PELLEGRINO: Thank you, your Honor.

8 THE COURT: Oh, I'm sorry. Here. I neglected
9 yesterday to give you the rulings on the Paul Kim additional
10 designation by defense. So here are my rulings.

11 MR. PELLEGRINO: Thank you. On that, your Honor, we
12 have professional readers that we wanted to address with the
13 Court.

14 THE COURT: Pardon?

15 MR. PELLEGRINO: We have professional readers to read
16 these designations, your Honor.

17 THE COURT: Oh, okay. Very good.

18 (Recess)

19 (In open court; jury no present)

20 THE COURT: On Friday at 2:00 p.m., the approximately
21 20 students in the seminar I teach at NYU Law School on Science
22 in the Courts are coming to watch this trial. This of course
23 is an independent reason for denying the mistrial motion. And
24 of course they'll watch whatever is going on. But I was sort
25 of hoping that maybe that would be a good time to put the

O3RASEC2

1 plaintiff's expert on the stand because they've been studying a
2 lot about experts. So I just mention that for your
3 consideration. If we can do it on Friday afternoon, that would
4 be great.

5 Okay. Please call your next witness.

6 MR. PELLEGRINO: Your Honor, just again very briefly,
7 the designations you handed back with Paul Kim do not include
8 the defendants' designations. Still those were in our binder,
9 but I have copies of that I showed to the SEC. We can hand
10 those up to the Court.

11 THE COURT: I'm sorry. I thought I had done the ones
12 from the defense binder. Neil?

13 THE LAW CLERK: I thought so too, but let's take a
14 look at what they have I guess.

15 THE COURT: Let me see what you have.

16 MR. PELLEGRINO: We have copies here, your Honor.

17 THE COURT: Go ahead.

18 MR. PELLEGRINO: May I?

19 THE COURT: Yeah.

20 All right. No, I don't want to take time now. We'll
21 sort this out.

22 Please call your next witness.

23 MS. STAREN: Your Honor, before we call Mr. Myung, I
24 just had a couple of housekeeping items to address with respect
25 to his testimony.

O3RASEC2

1 First, I think as you recall, the defendants had a
2 motion *in limine* to exclude any evidence related to the Korean
3 prosecution. We have since met and conferred and I think we've
4 come to an agreement that the SEC will not put in any evidence
5 related to the Korean prosecution provided that the defense
6 agrees that they won't open the door. And just so that we're
7 all clear, our view is that any specific question relating to
8 any specific communication or event that happened after May of
9 2022, which is when Mr. Myung became aware of the Korean
10 prosecution, that in our mind could potentially open the door.
11 But I think we've agreed that we're going to try to steer clear
12 of those topics.

13 So we will, on our direct, not get into any such
14 evidence including the Korean prosecution.

15 THE COURT: Okay. You ready to call the witness? I'm
16 sorry?

17 MR. KORNBLAU: Should I mention the other item?

18 MS. STAREN: Just one more thing. I think we gave
19 your court deputy a hard copy of the witness binder that we
20 would like to have for Aaron, for the witness.

21 THE COURT: That's good because I don't have enough
22 volumes up here, so this will keep me occupied.

23 MR. CARNEY: Your Honor, and that binder was for the
24 witness to look at.

25 THE COURT: Oh, it's for the witness.

O3RASEC2

1 MR. CARNEY: Thank you, your Honor.

2 THE COURT: Good.

3 MR. CARNEY: Apologies, your Honor.

4 MR. MOREL: If I may, your Honor, one more
5 housekeeping item. Chris Morel, counsel for Do Kwon. The next
6 witness is a witness for both counsel for the company and
7 counsel for Do Kwon intend to present cross-examination, but
8 our cross-examination would be very brief. No more than five,
9 ten minutes.

10 THE COURT: Okay.

11 MR. MOREL: Thank you.

12 THE COURT: Let's bring in the jury.

13 MR. KORNBLAU: Wait, wait. Please, please, please.
14 Very quick. Two points. One, I hereby respectfully remind the
15 Court about the 30(b)(6) clarification.

16 THE COURT: Yes. Thank you very much.

17 MR. KORNBLAU: And, two, it's not time for cross yet
18 and I don't know when that will be, but just to give the Court
19 a heads up, it depends what Mr. Myung says, but there is a
20 possibility, which frankly I'm going to try to avoid, but there
21 is a possibility that we might need to refresh his memory on a
22 certain point with a recording. So the trick there, of course,
23 is if you don't want the jury to hear the recording --

24 THE COURT: Right. Right.

25 MR. KORNBLAU: So let me do a little free thinking and

O3RASEC2

1 your Honor will just tell me what to do. Depending if we're
2 near a break or something, we can just wait to the break and
3 then let the jury go out and do it. If it's not near a break,
4 we do have ear plugs, laptops with the recording on it that we
5 could give to your Honor or give to the witness. It's
6 cumbersome, and I would like to avoid it, but it just depends
7 what is he says. So just to flag that that might happen.

8 THE COURT: Okay. Another possibility would be just
9 to bring counsel and the witness and the Court into the robing
10 room, and we could do it there so.

11 MR. KORNBLAU: Great idea. Thank you.

12 THE COURT: Okay. Let's bring in the jury and let's
13 get the witness on the stand.

14 (Continued on next page)

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O3RASEC2

Myung - Direct

1 (Jury present)

2 THE COURT: Please be seated. Ladies and gentlemen,
3 before we swear in the next witness, I just wanted to add two
4 things about the (30)(b)(6) witness that you just saw.

5 This is probably obvious, but a (30)(b)(6) witness is
6 not testifying from personal knowledge, he's testifying from
7 his review of the records.

8 And, secondly, while his answers are binding on the
9 company, Terraform, they're not binding on the codefendant, Do
10 Kwon. Just binding on the company.

11 Okay. Let's swear in the next witness.

12 AARON MYUNG,

13 called as a witness by the Plaintiff,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. STAREN:

17 Q. Thank you, Mr. Myung. Good morning.

18 Where do you currently live?

19 A. I live in Seoul, Korea.

20 Q. And where are you from?

21 A. I was born in Los Angeles, but mostly from the Midwest.

22 Q. Okay. And did you attend college?

23 A. Yes, at the University of Michigan Ann Arbor.

24 Q. Did you graduate?

25 A. Yes.

O3RASEC2

Myung - Direct

1 Q. And what degree did you obtain?

2 A. Computer science.

3 Q. And after you graduated from Michigan, what did you do?

4 A. I worked as a software engineer at Palm.

5 Q. And how long were you at Palm?

6 A. I was there about one and a half years making smart phones,
7 pre-iPhone.

8 Q. Okay. And what did you do after you left Palm?

9 A. I went to go work for a company called Salesforce. It's
10 one of the largest companies in San Francisco doing business
11 software.

12 Q. Okay. And were you a software engineer there as well?

13 A. Yes, I was.

14 Q. Okay. And after -- sorry. How long were you at
15 Salesforce?

16 A. I was there for seven years.

17 Q. Okay. And after you left Salesforce, where did you go
18 next?

19 A. I created my own start-up.

20 Q. Okay. And what was the name of that start-up?

21 A. It was called Hello Cafe.

22 Q. And what was the business of Hello Cafe?

23 A. So it was like around the time of like Uber, so it was like
24 a way to meet like English tutor at your local cafe. So this
25 is in Korea.

O3RASEC2

Myung - Direct

1 Q. Okay. And approximately how long did you operate Hello
2 Cafe?

3 A. About two and a half years or so.

4 Q. Okay. And after you left Hello Cafe, where did you go
5 next?

6 A. I went to go to Korbit, which is the first Bitcoin
7 exchange.

8 Q. The first Bitcoin exchange --

9 A. Oh, the first Bitcoin exchange in Korea. So I headed
10 products there.

11 Q. I'm sorry, you headed what?

12 A. I headed the product team.

13 Q. Okay.

14 A. Yeah, the entire product team, which is inclusive of design
15 and engineering.

16 Q. Okay. And approximately how long were you at Korbit?

17 A. About two years.

18 Q. Okay. Are you familiar with a company called Chai
19 Corporation?

20 A. Yes.

21 Q. And what is Chai Corporation?

22 A. It's basically like PayPal, but for Korea. So as a user,
23 you can pay merchants really easily through your app.

24 Q. Okay. And were you ever employed with Chai?

25 A. Yes.

O3RASEC2

Myung - Direct

1 Q. Approximately when were you employed with Chai?

2 A. From January 2021 until January 2022.

3 Q. And where is Chai located?

4 A. It's located in Seoul, Korea, although the holding company
5 is in Singapore.

6 Q. And where did you live when you worked at Chai?

7 A. I lived in Seoul, Korea.

8 Q. And what positions did you hold at Chai?

9 A. First, I was a senior advisor, and I was promoted to chief
10 product officer at the company.

11 Q. Okay. Let's talk about your position as senior advisor.

12 What was your role as senior advisor at Chai?

13 A. I advised the CEO on products, like work structure and
14 things like that.

15 Q. And who was the CEO at that time?

16 A. His English name is Daniel Shin. Korean name Shin Hyun
17 Sung.

18 Q. And, I'm sorry. Can you tell me again, you advised him on
19 what topics?

20 A. On just like generally product technology, design, and
21 generally the kind of like business structure, team structures
22 and processes.

23 Q. Okay. And how frequently did you communicate with Mr. Shin
24 in that role?

25 A. Every day.

O3RASEC2

Myung - Direct

1 Q. And what language did you and Mr. Shin generally use when
2 the two of you communicated?

3 A. Pretty much always English.

4 Q. Okay. Do you speak Korean?

5 A. Yes, I do.

6 Q. Do you have an understanding as to whether Mr. Shin speaks
7 Korean?

8 A. Yeah, he does. He's perfectly bilingual.

9 Q. As senior advisor, did you supervise anyone?

10 A. No, I did not.

11 Q. And approximately how long were you in the role of senior
12 advisor?

13 A. Up until about May.

14 Q. And is that --

15 A. Like actually up until about April, yeah.

16 Q. Is that in 2021?

17 A. Yes.

18 Q. And at that point did you transition to become chief
19 product officer?

20 A. Yes, in May.

21 Q. And what was your role as chief product officer?

22 A. So I headed all the product and engineering groups. So all
23 of product engineering and design report to me.

24 Q. So you said product engineering and design groups reported
25 to you?

O3RASEC2

Myung - Direct

1 A. Yeah. I had two heads of engineering, one head of design,
2 and nine product managers.

3 Q. Okay. Let's talk about the two heads of engineering, of
4 the engineering teams. Who were those?

5 A. The first one is Ji'Hoon Kim. He was head of engineering
6 for the Chai wallet. And one was Dooho Chang. He was head of
7 engineering for i'mport.

8 Q. And those two individuals reported to you?

9 A. Yes.

10 Q. And then you mentioned -- oh, what was the function of the
11 engineering team within Chai?

12 A. So it was just to take care of all the engineering, like
13 design and the programming of the software code.

14 Q. And did that include programming code for Chai's payment
15 systems?

16 A. Yes, all of it, yeah.

17 Q. Okay. Let's talk about the design team. Who led that
18 team?

19 A. It was Justin Huang.

20 Q. And what was the function of the design team at Chai?

21 A. They created the -- like the user interfaces of the
22 products, or like the website design, things like that.

23 Q. Okay. So when you say the user interface, does that
24 include the application itself?

25 A. Yes.

O3RASEC2

Myung - Direct

1 Q. And then let's talk about the product management teams.

2 Did you say that there were nine product managers that reported
3 to you?

4 A. Yes, there was.

5 Q. Okay. And what was the function of those product
6 management teams?

7 A. So they would manage like the road maps and the priorities
8 of each of the subsections of the products at the company.

9 Q. And who did you report to as chief product officer?

10 A. To the CEO Daniel Shin.

11 Q. And in your roles as senior advisor and then as chief
12 product officer, did you have any visibility into Chai's
13 product lines?

14 A. Yes, all of them.

15 Q. Okay. And what were Chai's products?

16 A. So it was a Chai e-wallet and the Chai card and then the
17 i'mport business.

18 Q. Okay. And let's go through each one of those in a little
19 bit of detail, starting with the Chai e-wallet. What was that?

20 A. So that's like the PayPal kind of portion of it, where like
21 a user can send money to a merchant.

22 Q. And can you explain how that application worked?

23 A. Yeah. So like a user will just go to the app store, they
24 would download it, and they would link their bank account, and
25 they'll -- let's say if they go to like an E-commerce shopping

O3RASEC2

Myung - Direct

1 site. So say if you're buying shoes or something like that,
2 you add to your basket. And at checkout, there's all these
3 different checkout options like credit card and like whatever.
4 And Chai would be one of those payment options. You press that
5 button and the Chai app would come out, and you just press pay
6 and everythings done.

7 Q. And the currency that Chai customers used, what was that?

8 A. It was in Korean won.

9 Q. And what is Korean won?

10 A. It's the national currency of Korea. Similar to USD for
11 America.

12 Q. When you say USD what --

13 A. Oh, U.S. dollar.

14 Q. Okay. And is the Korean won a type of fiat currency?

15 A. Yes, it is.

16 Q. And just to be clear, is the Korean won a crypto asset?

17 A. No, it's not.

18 Q. And how do you know that Chai customers were paying using
19 Korean won?

20 A. Because they were like linking their bank accounts and
21 saying to users and we had contracts with merchants and that we
22 settle -- we settle with them on approximately monthly basis,
23 sometimes less, sometimes more.

24 Q. And did you get information -- or how did you get
25 information about how Chai customers were paying?

O3RASEC2

Myung - Direct

1 A. Well, so like the whole product experience, like we design
2 that entire experience step by step. So and also I was a user
3 myself. You know, because I have to get familiar with the
4 product. And also, like one of the product managers, they like
5 managed like it's called the admin console, so all the
6 settlement logs are there.

7 Q. Okay. And so I think you touched a little bit on this, but
8 maybe you can answer.

9 How were the merchants that participated in Chai, how
10 were they paid through Chai's e-wallet?

11 A. So Chai, from their accounts, through the bank, would
12 transfer money through the bank to their bank account.

13 Q. Okay. And were Chai merchants paid in Korean won?

14 A. Yes, they were.

15 Q. And I think you mentioned that there was some time period
16 between when a Chai customer would make a payment and the
17 merchant was then actually paid to their bank account.

18 Approximately how long was that time?

19 A. It's about like every month. But sometimes it's less if
20 the -- if those amounts are larger, and sometimes it would be
21 longer, like quarterly for some merchants.

22 Q. Okay. And did Chai settle with any of these merchants on
23 the blockchain?

24 A. Never.

25 Q. Did Chai settle with any of these merchants in crypto

O3RASEC2

Myung - Direct

1 assets?

2 A. Never.

3 Q. And how do you know that merchants were not getting paid in
4 crypto?

5 A. Because all the product teams reported to me. I worked on
6 the product on a day-to-day basis. I got familiar with all the
7 systems and I saw all the logs of settlements.

8 Q. You mentioned earlier something called an admin console;
9 what is that?

10 A. So it's an internal tool that we developed so that we can
11 basically monitor all the payments that we make to merchants.

12 Q. And you had access to that administrative console?

13 A. Yeah. And like the purpose of that also is to also manage
14 the deals. So like each merchant had a different deal
15 structure. So like in the process of settlements, it's very
16 complex, so like we would have to like net out all the money,
17 and then what's ever that we have to pay the merchants, we
18 would do that through the console.

19 Q. Okay. I think you testified earlier that you can speak
20 Korean; is that right?

21 A. Yes.

22 Q. Can you also read Korean?

23 A. Yes, I can.

24 MS. STAREN: Mr. Maywood, could you please pull up
25 Plaintiff's Exhibit 138a for the witness, please.

O3RASEC2

Myung - Direct

1 Q. And you also have a copy of this exhibit, Mr. Myung, in the
2 binder in front of you.

3 Is this document in Korean?

4 A. Yes, it is.

5 Q. Are you able to read this document?

6 A. Yeah.

7 Q. Do you recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 A. It's a Chai service agreements between Chai and Yanolja.

11 MS. STAREN: And this agreement or this exhibit has
12 been stipulated to. We would move to admit Plaintiff's Exhibit
13 138a into evidence.

14 MR. KORNBLAU: No objection.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 138a received in evidence)

17 MS. STAREN: Mr. Haywood, you can publish to the jury.

18 Q. Mr. Myung, were you involved at all in the execution or
19 negotiation of this agreement?

20 A. No, I wasn't.

21 Q. Was Yanolja a Chai merchant during your time as senior
22 advisor and then chief prodcut officer of Chai?

23 A. Yes, they were.

24 MS. STAREN: Mr. Haywood, could you please go to the
25 last page and pull out the date, or what I believe is the date.

O3RASEC2

Myung - Direct

1 Q. Could you please read that date, Mr. Myung?

2 A. Yeah. So August 23, 2019.

3 MS. STAREN: Could you please show the witness only
4 Plaintiff's Exhibit 138b.

5 Q. Was there translation made of this document, Mr. Myung?

6 A. Yes.

7 Q. And is this a true and accurate translation of the Yanolja
8 contract we just looked at in Korean?

9 A. Yes.

10 MS. STAREN: This translation has also been stipulated
11 to. We would move to admit Plaintiff's Exhibit 138b into
12 evidence?

13 MR. KORNBLAU: Objection. I mean, no objection.
14 Sorry.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 138b received in evidence).

17 MS. STAREN: Thank you. You can publish it to the
18 jury, Mr. Haywood.

19 Could you please turn to I guess it's page two of the
20 exhibit, but it's the first page of the document and pull out
21 the title in the first paragraph.

22 Q. Mr. Myung, could you please read the title of this
23 document?

24 A. Yes. It says "Chai Service Agreement."

25 Q. And can you please read the first paragraph?

O3RASEC2

Myung - Direct

1 A. Yeah. It says Yanolja Co., Ltd. (hereinafter referred to
2 as "Party A") and Jigu Electronic Payment Corporation
3 (hereinafter referred to as "Party B") have made an entered
4 into the following Service Agreement (hereinafter referred to
5 as this "Agreement") in connection with the use of electronic
6 financial transaction services that use the Electronic
7 Prepayment Means issued and managed by Party B (hereinafter
8 referred to as the "Service").

9 Q. Okay. So that was a lot of legalese. Let's try to break
10 that down a little bit.

11 First, what is Yanolja again?

12 A. So Yanolja is basically like an Expedia or like a
13 hotels.com of Korea.

14 MR. KORNBLAU: Objection. Relevance.

15 THE COURT: Overruled.

16 Q. And is Yanolja the company identified as Party A here?

17 A. Yes.

18 Q. And what is Jigu Electronic Payment Corporation?

19 A. That's Chai.

20 Q. And is Chai the company identified as Party B here?

21 A. Yes.

22 Q. And what does this agreement relate to?

23 A. It's an agreement for Chai to pay Yanolja for selling the
24 transactions on behalf of Yanolja's customers.

25 Q. Okay. Could you please turn to page eight of this

O3RASEC2

Myung - Direct

1 document, and focusing on the section titled article eight.

2 Could you please read the highlighted section starting with
3 "settlement of payment amount."

4 A. Yeah. It says, "Settlement of Payment Amount." "Party B
5 shall pay party A the amount of payment for the normal
6 transactions carried out using the Service after deducting all
7 fees, such as the fee under Article 9, value-added tax, etc.
8 (hereinafter referred to as the 'Settlement Amount.')

9 Number two, "Settlement Date." "D, which is payment
10 date, plus 14 days (or the following business day if the
11 settlement date is a Saturday or a holiday.)"

12 Number three, "Payment of Settlement Amount." And the
13 section (b) of that is "Party B shall pay the Settlement Amount
14 to the below account designated by Party A, on the settlement
15 date."

16 Q. And can you please read -- no, no. Platform and bank
17 please.

18 A. Yeah, so the platform is Yanolja, and the bank is Woori.
19 It's a big bank in Korea.

20 Q. Okay. And, again, that was a lot of legalese. Could you
21 please explain what your understanding is how -- sort of in
22 layman's terms, how Yanolja was getting paid under this
23 agreement?

24 A. Yeah. So every 14 days or thereabouts, Chai would be
25 paying Yanolja to their bank account listed there below, to

O3RASEC2

Myung - Direct

1 settle the payments.

2 Q. And what was the currency that was used to make these
3 payments?

4 A. Korean won.

5 Q. Okay. And is this consistent with how you understood that
6 Yanolja was getting paid during your time as senior advisor and
7 chief product officer at Chai?

8 A. Yes.

9 MS. STAREN: And actually, Mr. Haywood, could you go
10 to the last page of this translation, please, or this exhibit,
11 please. And could you highlight the signature block there.

12 Q. Mr. Myung, could you tell me who signed on behalf of Jigu
13 Electronic Payment Corporation or Chai?

14 A. Yeah. It's Chang-Jun Han.

15 Q. Do you know whether Chang-Jun Han was ever known by any
16 other name?

17 A. People called him CJ.

18 Q. And do you know who CJ Han is?

19 A. Yeah, he was CFO at Terraform Labs, and also the first CEO
20 at Chai Corporation.

21 MS. STAREN: Okay. Thank you. You can take that down,
22 Mr. Haywood.

23 Q. Mr. Myung, you also mentioned a product called the Chai
24 card; can you tell me what that is?

25 A. Yeah, it's like a debit card by BCard. It's a company,

O3RASEC2

Myung - Direct

1 card company, and basically it uses the Chai wallet to settle
2 the funds for the card transactions.

3 Q. Okay. So when you say it uses the Chai wallet, is that the
4 Chai e-wallet that we just talked about?

5 A. Yes, it is.

6 Q. Okay. And what currency did Chai card users to make their
7 payments?

8 A. I'm sorry?

9 Q. What currency did Chai card users use to make their
10 payments?

11 A. Oh. Care W, Korean won.

12 Q. And what currency was used to pay the merchants that
13 accepted the Chai card?

14 A. Care W, Korean won.

15 Q. I think the last product line you described was something
16 called the i'mport business; could you describe what that is?

17 MR. KORNBLAU: Objection. Relevance.

18 THE COURT: Overruled.

19 A. Yeah. It's a business-to-business service where we make
20 it -- or Chai made it easy for merchants to accept payment
21 because it's like really hard to integrate with payment
22 gateways, so Chai just made it very simple to make that
23 integration.

24 Q. And just to be clear, when you say "business to business,"
25 what does that mean?

O3RASEC2

Myung - Direct

1 A. It means that Chai is working with the merchants
2 themselves, so because they're both businesses, that's a
3 business-to-business transaction.

4 Q. Okay. And what currency was used to make these payments
5 through these payment gateways?

6 A. It was in Korean won.

7 Q. Okay. Did there come a time when you learned of something
8 called a KRT top-up program?

9 A. Yes.

10 Q. And approximately when did you learn of that?

11 A. Some time towards the middle of my employment there.

12 Q. Okay. And was that 2021?

13 A. Yeah.

14 Q. Okay. And what is KRT?

15 A. So KRT is the stablecoin for KRW.

16 Q. And who offered KRT?

17 A. Terraform Labs.

18 Q. And, sorry, just to go back. You said KRW; what is that?

19 A. So KRW is the paper currency and KRT is the stablecoin for
20 KRW.

21 Q. And just to be clear for the jury's edification, KRW stands
22 for what?

23 A. Korean won.

24 Q. Okay.

25 A. Yeah.

O3RASEC2

Myung - Direct

1 Q. And then what did you understand the KRT top-up program
2 was?

3 A. It was basically like a beta test program. So that's like
4 users could basically, you know, top-up or add KRT stablecoins
5 to Chai wallet up to about \$40.

6 Q. Okay. And how did you learn about the KRT top-up program?

7 A. I learned it through my head of engineering.

8 Q. And who was that?

9 A. Ji'Hoon Kim.

10 Q. Okay. And when, approximately when, did you understand
11 that this beta program was in operation?

12 A. Actually towards the end of my employment, like middle to
13 end.

14 Q. Of 2021?

15 A. Yes.

16 Q. And do you have any understanding as to how long the
17 program was offered?

18 A. Like a few months max.

19 Q. And during this time did you see the KRT top-up option used
20 very frequently?

21 A. I never saw it. I managed the product and also used the
22 product, but I don't know of any customers that used it.

23 Q. Okay. And apart from the KRT top-up program that we just
24 discussed, did Chai's e-wallet business use crypto for any
25 payment transactions?

O3RASEC2

Myung - Direct

A. Never.

(Continued on next page)

03RHSec3

Myung - Direct

1 BY MS. STAREN:

2 Q. Did the Chai card business use crypto for any payment
3 transactions?

4 A. No, never.

5 Q. Did Chai's i'mport business use crypto for any payment
6 transactions?

7 A. Never.

8 Q. Apart from those three business lines — the e-wallet, the
9 Chai card, and i'mport — did Chai have any other products?

10 A. No.

11 Q. Did any Chai merchants get paid in crypto?

12 A. Never.

13 Q. And how do you know that?

14 A. Because all the teams reported to me, and, you know, I knew
15 the products in and out.

16 Q. I'm sorry. Can you say that again.

17 A. Because I knew the products inside and out as the chief
18 product officer.

19 Q. And this understanding, was that consistent with what you
20 understood when you first joined Chai?

21 A. No.

22 Q. What was your understanding when you first joined Chai?

23 A. My understanding was that Chai used the Terra blockchain to
24 make transaction fees cheaper for merchants, and the company
25 would basically save — pass down those savings in the form of

O3RHSec3

Myung - Direct

1 deals for customers.

2 Q. And how did you get that understanding?

3 A. Through Daniel Shin.

4 Q. Anyone else?

5 A. Well, Do Kwon, but initially Daniel Shin.

6 Q. OK. Let's switch gears a little bit. How did you come to
7 learn about Chai Corporation?

8 A. Through my investment in The Encore Company.

9 Q. What is The Encore Company?

10 A. It's an investment fund that invested in startup companies.

11 Q. How did you get connected with The Encore Company?

12 A. Through Daniel Shin who was the CEO.

13 Q. And what investments did The Encore Company have?

14 A. A lot of various just, like, startups, which probably
15 didn't really do well, but their biggest one was in Terra.

16 Q. OK. How did they invest in Terra? What was their
17 investment in the form of?

18 A. Like, what do you mean "in the form of"?

19 Q. Sorry. What did The Encore Company actually own?

20 A. Oh, so The Encore Company, to my understanding, owned Luna.

21 Q. And what is Luna?

22 A. Luna is essentially the equity of the Terra ecosystem.

23 Q. Is Luna a crypto asset?

24 A. Yes, it is.

25 Q. Maybe you already said this, but who offered Luna?

O3RHSec3

Myung - Direct

1 A. Terraform Labs.

2 Q. OK. And in connection with your investment in Encore, did
3 you receive communications about Terraform Labs?

4 A. Yes, many.

5 Q. Is it OK if I refer to Terraform Labs as just Terraform?

6 A. Yes.

7 Q. Based on those communications, what did you understand that
8 Terraform was?

9 A. Well, it was a stablecoin backed by Luna. So Terra and
10 Luna, they kind of balance each other out.

11 Q. Sorry. Let me just restate that.

12 What did you understand Terraform, the company, was?

13 A. Oh, Terraform Labs the company. Yeah, so they offered
14 Luna, and they helped build and maintain the ecosystem around
15 the cryptocurrencies.

16 Q. OK. Did you gain an understanding from these
17 communications as to who controlled Terraform?

18 A. Most of it is Do Kwon.

19 Q. OK. And anyone else at that time?

20 A. At the time, Dan Shin.

21 Q. OK. And did you have an understanding — or what was your
22 understanding of their respective roles with respect to
23 Terraform?

24 A. So Do Kwon had the leading role of the company.

25 Q. And based on these communications — sorry, when you say

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Myung - Direct

1 "the company," which company?

2 A. For Terraform Labs, the company.

3 Q. Based on these communications, did you come to any
4 understanding as to the relationship between Chai and Terraform
5 Labs?

6 A. Yeah, they were basically the same company at first;
7 cofounded by the same two people.

8 Q. Just to be clear, you're saying Terraform and Chai were
9 cofounded by the same two people?

10 A. Yes.

11 Q. Who were those?

12 A. Do Kwon and Dan Shin.

13 MS. STAREN: OK. Mr. Haywood, could you please pull
14 up Plaintiff's Exhibit 104A for the witness, please.

15 Q. Can you review this document, Mr. Myung, and tell me if you
16 recognize it.

17 A. Yes, I do.

18 Q. What is it?

19 A. It's an investment update from Encore, Encore Company.

20 Q. OK. And is this an email?

21 A. Yes, it is.

22 Q. OK. And is this a true and accurate copy of the email that
23 you received?

24 A. Yes.

25 MS. STAREN: At this time we would move to admit

O3RHSec3

Myung - Direct

1 Plaintiff's Exhibit 104A into evidence.

2 MR. KORNBLAU: Objection. Hearsay.

3 THE COURT: Overruled.

4 (Plaintiff's Exhibit 104A received in evidence)

5 BY MS. STAREN:

6 Q. Mr. Haywood, you could publish to the jury.

7 Could you please — looking at the first page and that
8 top email from Daniel Shin, could you please read the date of
9 that email for me, please, Mr. Myung.

10 A. Yes. January 3, 2019.

11 Q. And is this an email you received as an investor in Encore?

12 A. Yes.

13 Q. And can you please go to the section titled "Terra" and
14 read the fourth bullet.

15 A. Says, "For further details, please see an update we sent to
16 Terra investors attached."

17 Q. Did you receive this attachment?

18 A. Yes.

19 MS. STAREN: OK. Mr. Haywood, could you please show
20 the witness Plaintiff's Exhibit 104B.

21 Q. Mr. Myung, do you recognize 104B?

22 A. Yes.

23 Q. What is it?

24 A. It's an update for Terra investors.

25 Q. OK. Is this the attachment to the email we just looked at?

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Myung - Direct

1 A. Yes.

2 Q. And is this a true and accurate copy of that attachment?

3 A. Yes.

4 MS. STAREN: OK. We move at this time to admit
5 Plaintiff's Exhibit 104B into evidence.

6 MR. KORNBLAU: Objection. Relevance.

7 THE COURT: Overruled.

8 (Plaintiff's Exhibit 104B received in evidence)

9 MS. STAREN: OK. Mr. Haywood, you can please publish
10 to the jury.

11 Q. Could you take a look at the very first line and read that
12 for me, please.

13 A. Says, "Dear Terra investor."

14 Q. And then can you please go to the section titled "Product
15 Remand" and read the first sentence of that for me, please.

16 A. Yeah. It says: "In an effort to separate the branding for
17 the payment service with that of the underlying blockchain
18 technology, we've decided to rebrand TerraPay to Chai."

19 Q. Is this the first time you've seen Chai referenced?

20 A. Yes.

21 Q. What did you understand the relationship was between Chai
22 and Terraform from this document?

23 A. So Chai was the payments product for Terra.

24 MS. STAREN: OK. Could you please go to, Mr. Haywood,
25 go to the third page and highlight just that last two lines.

O3RHSec3

Myung - Direct

1 Q. Mr. Myung, could you please read that.

2 A. It says, "Thanks, Dan & Do."

3 Q. Who are Dan and Do?

4 A. Dan Shin and Do Kwon.

5 Q. What was your understanding as to why those two individuals
6 were signing this document to Terra investors?

7 A. Because they were the cofounders.

8 MS. STAREN: OK. Mr. Haywood, could you please pull
9 up Plaintiff's Exhibit 107, for the witness only.

10 Q. Mr. Myung, do you recognize Plaintiff's Exhibit 107?

11 A. Yes.

12 Q. What is it?

13 A. It's another Encore update.

14 Q. OK. Is this an email from Dan Shin?

15 A. Yes, it is.

16 Q. Is this a true and accurate copy of that email?

17 A. Yes.

18 MS. STAREN: We would move to admit Plaintiff's
19 Exhibit 107 into evidence.

20 MR. KORNBLAU: Objection. Hearsay.

21 THE COURT: Overruled.

22 (Plaintiff's Exhibit 107 received in evidence)

23 BY MS. STAREN:

24 Q. Mr. Myung, could you please, looking at the top email from
25 Daniel Shin, read the date of this email.

O3RHSec3

Myung - Direct

1 A. It says September 24, 2019.

2 Q. And I think you may have mentioned, is this another email
3 you received as an investor in Encore?

4 A. Yes.

5 Q. OK. Can you turn to page 2, please. Do you see where it
6 says "Forwarded message"?

7 A. Yes.

8 Q. Is this a message that Dan Shin was forwarding to you?

9 A. Yes, it was.

10 Q. Who was this forwarded message from?

11 A. From Do Kwon.

12 Q. Can you please read the email address that Do Kwon was
13 using.

14 A. Yes. It's do@terra.money.

15 Q. What is the date of this email?

16 A. September 23, 2019.

17 Q. Can you please read the subject line of the email from Do
18 Kwon.

19 A. Says, "Terra August/September investor update."

20 Q. Can you please read the highlighted text starting with,
21 "Dear Terra investor."

22 A. It says: "Dear Terra investor, this month calls for a
23 bumper update to recap over August and September activity.
24 After three months we are currently the third most used
25 blockchain after Bitcoin and Ethereum."

O3RHSec3

Myung - Direct

1 Q. What did you understand Do Kwon meant when he said "we are
2 currently the third most used blockchain after Bitcoin and
3 Ethereum"?

4 A. I took it as it's the literal third most used blockchain
5 after Bitcoin and Ethereum.

6 Q. OK. Was it your understanding that that was significant to
7 be the third most used blockchain?

8 A. Yes, because that means it has utility.

9 Q. When you say "it has utility," what are you referring to
10 it?

11 A. The Terra blockchain.

12 Q. And if you turn to page 4, the second paragraph, starting
13 — it's one, two, three, four — fifth line down, starting
14 "with these new partners on board," could you please read that
15 sentence for me, please. Starting "with these new partners on
16 board."

17 A. Could you highlight that, please.

18 Q. It's the one, two, three, four — fifth line down.

19 A. Oh, OK.

20 "With these new partners on board, Terra will strive
21 to become the first blockchain payments network accepted
22 everywhere, ringing truth to our slogan, 'Korea runs on
23 Terra.'"

24 Q. Did you have an understanding as to what Do Kwon meant when
25 he said "Korea runs on Terra"?

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Myung - Direct

1 A. Yeah. So the Terra blockchain — so Korea — I mean, so,
2 like, basically 5 percent of Korea runs on the Terra blockchain
3 for e-commerce payments is what he was saying.

4 Q. Sorry. Is what he was saying?

5 A. Yeah. Like, that's what he would say to me.

6 Q. And when — did you understand whether he was referring to
7 Chai?

8 MR. MOREL: Objection. Speculation.

9 THE COURT: Overruled.

10 A. Yeah, because it's Korea runs on Terra.

11 MR. KORNBLAU: Objection here, your Honor. It's
12 outside the scope of the pretrial order as we discussed.

13 THE COURT: Hang on a minute.

14 Overruled.

15 MS. STAREN: Could you please go to page 6 of this
16 document.

17 Q. Tell me who signed this email.

18 A. Says, "Sincerely Do & Dan."

19 Q. Is that Do Kwon and Dan Shin again?

20 A. Yes.

21 MS. STAREN: You can take that down, Mr. Haywood.

22 Q. Did there come a time, Mr. Myung, when you discussed the
23 possibility of employment with Dan Shin?

24 A. Yes.

25 Q. And when was that?

O3RHSec3

Myung - Direct

1 A. It was like when I was coming into Korea.

2 Q. Do you remember approximately what time frame that was?

3 A. I think it was at the end of 2019.

4 Q. What did you discuss?

5 A. I just wanted to catch up at that time and see if there was
6 any opportunities that he knew of.

7 MS. STAREN: Could you please pull up Plaintiff's
8 Exhibit 108A for the witness, please.

9 Q. Do you recognize — sorry. Do you recognize this exhibit,
10 Mr. Myung?

11 A. Yes.

12 Q. What is it?

13 A. It's email exchange between me and Dan.

14 Q. And is this a true and accurate copy of the email exchange
15 between you and Mr. Shin?

16 A. Yes.

17 MS. STAREN: OK. We would move to admit Plaintiff's
18 Exhibit 108A into evidence.

19 MR. KORNBLAU: Objection. Hearsay, relevance.

20 THE COURT: Overruled.

21 (Plaintiff's Exhibit 108A received in evidence)

22 MS. STAREN: So let's focus on the first email on the
23 very last page. Sorry, it's the last email, but it's just the
24 first of the chain. Thank you.

25 BY MS. STAREN:

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Myung - Direct

1 Q. Could you please read the date of that email.

2 A. Yeah, it said November 5, 2019.

3 Q. And who is this email from?

4 A. It's from me.

5 Q. And who is this email to?

6 A. It's to Dan.

7 Q. Can you please read the — sorry, when you say "Dan," is
8 that Dan Shin?

9 A. Yes, Dan Shin.

10 Q. Can you please read the first line starting with "Hi Dan"
11 and then that first paragraph.

12 A. Yeah. It's "Hi Dan, how's going? It's been cool to see
13 the progress in your companies. My two-year Korea ban is
14 finally coming to an end this month, and I'm moving back to
15 Korea."

16 Q. What was the Korea ban you're referring to here?

17 A. I had, like, a visa issue related to my start with Hello
18 Cafe.

19 Q. What was that visa issue?

20 A. So Hello Cafe was, like, a marketplace for, like, native
21 English speakers. So they needed, like, visas to actually
22 meet, like, Korean people to speak in English in cafes. So
23 because of that, I got a fine, and because of the fine, I had
24 an automatic two-year ban.

25 Q. And approximately when was this fine?

O3RHSec3

Myung - Direct

1 A. This was like around 2018.

2 Q. And did you —

3 A. Or '17, something like that, yeah.

4 Q. And did you, in fact, pay the fine?

5 A. Yes.

6 Q. OK. And why are you contacting Dan Shin at this time?

7 A. Because I'm able to come back to Korea now, and I want to
8 settle in.

9 Q. OK. Can you please go to page 1, and focusing on the
10 bottom email, who is this bottom email from?

11 A. It's from me.

12 Q. And who is it to?

13 A. To Dan.

14 Q. And can you please read the date of this email.

15 A. It is November 9, 2019.

16 Q. And can you please read that first paragraph that you
17 write.

18 A. Yeah. It says: "I am curious about Terra because I'm not
19 sure what to think of it. I can understand that sellers
20 benefit by using a stablecoin, but what's in it for the
21 consumers (buyers)?"

22 Q. When you say Terra here, what are you referring to by the
23 word "Terra"?

24 A. It's the Terra stablecoins.

25 Q. Are you referring to a specific Terra stablecoin?

O3RHSec3

Myung - Direct

1 A. For Korea, it would be the KRT.

2 Q. I'm sorry, say that again.

3 A. So for Korea, it would be KRT.

4 Q. OK. And when you talk here about sellers benefiting by
5 using a stablecoin, what sellers are you talking about there?

6 A. It's talking about the merchants.

7 Q. The merchants with Chai?

8 A. Yes, the merchants with Chai.

9 Q. And what led you to think that Chai merchants were using
10 Terra stablecoins at this point in time?

11 A. Yeah, because instead of paying large fees for transaction
12 fees, through Terra, it'd basically be super low transaction
13 fee.

14 Q. And who told you that?

15 A. Dan Shin.

16 Q. Anyone else?

17 A. Do Kwon.

18 Q. Were there any other sources saying that?

19 A. I mean, like mainly those two, but, like, Nicholas Platias.

20 Q. Going to the top of this first page and focusing on that
21 top email, who is this email from?

22 A. It's from Daniel Shin.

23 Q. And can you please read Daniel Shin's email address there.

24 A. Yeah. Daniel@terra.money.

25 Q. Do you have an understanding as to why Mr. Shin had a

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Myung - Direct

1 terra.money email address at that time?

2 A. Speaking at the time, Do and Dan were mainly about Terra
3 and Terraform Labs. Chai came later.

4 Q. And what is the date of this email?

5 A. November 10, 2019.

6 Q. Can you please read the first paragraph of Dan Shin's
7 response to you.

8 A. Says, "Hey Aaron, the benefit for the merchants is cheaper
9 transaction fees. This is a huge problem for e-retail
10 platforms that run on razor thin margins."

11 Q. Can you please read the last sentence of — yes, right
12 there, starting with "hope this is helpful."

13 A. "Hope this is helpful. Also attaching a quick deck on Chai
14 to paint an overview."

15 Q. Did you receive the attachment?

16 A. Yes.

17 MS. STAREN: Could you please show the witness
18 Plaintiff's Exhibit 108B.

19 Q. Do you recognize Plaintiff's Exhibit 108B?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's an investor presentation.

23 Q. Is this a complete and accurate — sorry.

24 Was this the attachment to the email we just looked
25 at?

O3RHSec3

Myung - Direct

1 A. Yes.

2 Q. Is this a complete and accurate copy of that attachment?

3 A. Yes.

4 MS. STAREN: We would move to admit Plaintiff's
5 Exhibit 108B into evidence.

6 MR. KORNBLAU: Objection. Hearsay.

7 THE COURT: Overruled.

8 (Plaintiff's Exhibit 108B received in evidence)

9 MS. STAREN: Mr. Haywood, you could publish for the
10 jury.

11 BY MS. STAREN:

12 Q. Mr. Myung, what did you understand this document was again?

13 A. It was an investor presentation.

14 Q. For what company?

15 A. For Chai.

16 Q. And if you could please read the title of this document.

17 A. It says, "chai: A disruptive payment solution for an
18 exploding Asian e-commerce market."

19 Q. Can you read what's written in the lower left-hand corner.

20 A. It says, "Powered by Terra."

21 Q. What did you understand that meant?

22 A. That the Chai payment product was powered by Terra.

23 Q. Could you please —

24 A. Terra blockchain.

25 Q. Thank you.

O3RHSec3

Myung - Direct

1 Could you please go to page 7 of this slide deck and
2 read the highlighted language on the left, please.

3 A. It says, "Chai delivers a low processing fee by replacing
4 the cluttered payment value chain with a single blockchain
5 layer."

6 Q. What did you understand that to mean?

7 A. Well, so typically for payments, it's super complicated.
8 There's a lot of banks and a bunch of different companies in
9 between. So to finally settle payment, it's just, like,
10 really, really cluttered and complex. But through the
11 blockchain, you can just remove all those intermediate layers
12 and all those intermediate fees, and go straight between the
13 user and the merchant really quickly, easily, and cheaply.

14 Q. Is that your understanding of what is being reflected in
15 these two figures to the right?

16 A. Yes.

17 Q. And according to these figures, were they representing that
18 Chai used any bank accounts at all for its payment processing?

19 A. Not in the picture there, no.

20 MS. STAREN: OK. Could we go to page 22, please.

21 Q. Can you please read the text at the top of this.

22 A. Yeah. "Chai is steered by serial entrepreneurs and a team
23 with deep industry experience in payments and financial
24 services."

25 Q. And who are the two serial entrepreneurs being listed here?

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Myung - Direct

1 A. Daniel Shin and Do Kwon.

2 Q. Can you please read the description under Daniel Shin.

3 A. Yeah. So it says, "Co-founder. Leads business development
4 and investor relations."

5 Q. And can you please read the description under Do Kwon.

6 A. Yeah. It says, "Co-founder. Leads engineering and
7 research efforts."

8 Q. And is this consistent with your understanding of Do Kwon's
9 and Dan Shin's respective roles at Chai?

10 A. Yes.

11 Q. Did there come a time when you met Do Kwon?

12 A. Yes.

13 Q. And approximately when was that?

14 A. It was either at the end of 2019 or early 2020 was the
15 first time.

16 MS. STAREN: Mr. Haywood, could you please pull up
17 Plaintiff's Exhibit 660, just for the witness, please.

18 Q. Mr. Myung, do you recognize Plaintiff's Exhibit 660?

19 A. Yes.

20 Q. What is it?

21 A. It's Do Kwon.

22 MS. STAREN: We would move to admit Plaintiff's
23 Exhibit 660 into evidence.

24 MR. MOREL: No objection.

25 THE COURT: Received.

O3RHSec3

Myung - Direct

1 (Plaintiff's Exhibit 660 received in evidence)

2 MS. STAREN: Thank you, Mr. Haywood. You can publish
3 to the jury.

4 BY MS. STAREN:

5 Q. Mr. Myung, who is this a photo of again?

6 A. It's a photo of Do Kwon.

7 Q. And how do you know that?

8 A. Because I met him.

9 Q. OK. Did you meet with Do Kwon on more than one occasion?

10 A. Yeah. Some time, less than ten.

11 Q. OK. And where did these meetings take place?

12 A. Usually cafes or — but most — actually, like, in the
13 beginning, mostly at the Chai office.

14 Q. At the Chai office.

15 Was that different than Terraform's offices?

16 A. No, they were the same office.

17 Q. OK. And what language did you and Do Kwon primarily
18 communicate in?

19 A. English.

20 Q. And what did you discuss with Do Kwon in these meetings?

21 A. Just, like, products, technology, Chai just, like, you
22 know —

23 Q. OK. Did that include engineering issues with respect to
24 Terraform and Chai?

25 A. Yeah.

O3RHSec3

Myung - Direct

1 Q. And during any of these meetings, did Do Kwon discuss
2 engineering issues with respect to Chai's payment system?

3 A. Yeah. I mean, like, we would go over them, like, on a
4 whiteboard and kind of draw it out.

5 Q. OK. And what did Do Kwon tell you about how Chai was
6 processing and settling its payments?

7 A. He told me that it was all through the Terra blockchain.

8 Q. OK. Was anyone else present during any of these meetings?

9 A. Yeah. So Nicholas Platias and Ji'Hoon Kim.

10 Q. And who was Nicholas Platias?

11 A. Nicholas Platias, he cowrote the Terra white paper, and he
12 was also an employee of Chai and Terra.

13 Q. OK. And what about Ji'Hoon Kim?

14 A. I'm sorry?

15 Q. What about Ji'Hoon Kim? Can you tell me about him?

16 A. Ji'Hoon Kim was engineering manager originally from
17 Terraform Labs, but he came over to Chai, and he was
18 engineering manager there.

19 Q. OK. Now, you've testified that at least at first, before
20 you started at Chai, your understanding was Chai was treated as
21 part of Terraform, is that right?

22 A. Yes.

23 Q. OK. And what led you to that understanding again?

24 A. They shared the same office, had the same support staff,
25 had the same cofounders, had the same first go-to-market

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Myung - Direct

1 product. They represented themselves to me as basically, you
2 know, part of the same team, so . . .

3 Q. OK. Did there come a time when that changed?

4 A. Yeah. So in 2020, they had a split.

5 Q. And how did you learn of this split?

6 A. So Justin Huang at a cafe, he told me that —

7 MR. KORNBLAU: Objection. Hearsay.

8 Q. You can just tell me his name.

9 A. Oh. Justin Huang.

10 Q. Sorry.

11 Just to clarify, when we're talking about a split, are
12 we talking about a split of Chai from Terraform?

13 A. Yes, those two companies separated.

14 Q. And what did you understand at the time was the reason for
15 the separation?

16 MR. KORNBLAU: Objection. Foundation.

17 THE COURT: Sustained.

18 MR. MOREL: Objection. Hearsay.

19 MS. STAREN: I'll rephrase.

20 Q. Did you have an understanding about the reason for the
21 separation between Chai and Terraform?

22 A. Yeah. For, like, legal reasons —

23 THE COURT: No, no, just answer that yes or no.

24 MR. KORNBLAU: Objection.

25 Q. Just say yes or no.

O3RHSec3

Myung - Direct

1 A. Oh. Yes.

2 THE COURT: What was the basis for that foundation?
3 In other words, is that based on conversations? Is it based on
4 documents? If it's conversations, conversations with whom?
5 How'd you form this understanding?

6 THE WITNESS: Because they told me directly.

7 THE COURT: Who?

8 THE WITNESS: Justin Huang.

9 MR. KORNBLAU: Objection. Hearsay.

10 THE COURT: Sounds like it. Sustained.

11 BY MS. STAREN:

12 Q. Did there come a time when Chai and Terraform separated
13 offices as well?

14 A. Yes.

15 Q. Approximately when was that?

16 A. That was in that same year of 2020. So Terraform Labs
17 moved down the street a few blocks.

18 Q. And what about Chai's offices?

19 A. It stayed the same.

20 Q. After the split, did you continue to discuss possible
21 employment with Do Kwon and Dan Shin?

22 A. Yeah, so I interviewed with them separately, both of them.

23 Q. And did there come a time when you decided to join Chai?

24 A. Yes.

25 Q. What led to that decision?

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Myung - Direct

1 A. Well, I have a history with Dan, so I preferred to work
2 with him.

3 Q. Approximately when was that that you accepted the offer to
4 join Chai?

5 A. January of 2021.

6 Q. OK. When you were hired at Chai, were you paid a salary?

7 A. Yes.

8 Q. And approximately how much?

9 A. Well, as senior adviser, it was about \$100,000, and as
10 chief product officer, I think it was like about \$200,000.

11 Q. OK. Were you promised anything else in connection with
12 your employment?

13 A. Yes, stock.

14 Q. OK. Can you tell me about that.

15 A. Yeah. So I was promised a \$20 million stock grant that
16 would vest over — it was either four or five years, and there
17 was like a — like a performance component to it. So if the
18 company would grow, then based on certain milestones, I would
19 get certain portions of that stock grant.

20 Q. And who promised you those — the stock grant?

21 A. Dan Shin.

22 Q. And did you ever receive any stock?

23 A. No, I did not.

24 Q. I think you testified earlier, when you first joined Chai,
25 you thought Chai was using the blockchain, is that correct?

O3RHSec3

Myung - Direct

1 A. Yes.

2 Q. At some point after working at Chai, did there come a time
3 when your understanding changed?

4 A. Yes.

5 Q. And what changed about your understanding?

6 A. Well, that there was no blockchain being used to process or
7 settle transactions at the company.

8 Q. And how did you come to that understanding?

9 A. Well, once you start to work on the products and technology
10 long enough, you start to see the, you know, press, and you see
11 a disconnect between what's marketed outside and what's the
12 reality inside.

13 Q. And when you came to this understanding that you weren't
14 seeing Chai use the blockchain, what did you do next?

15 A. I brought it up to the CEO.

16 Q. And was that Dan Shin?

17 A. Yes.

18 Q. Approximately when was this?

19 A. It was around, like, the middle of my employment in the
20 year 2021.

21 Q. OK. How did Mr. Shin respond?

22 A. He told me that he has a gentleman's agreement with Do
23 Kwon. Basically, for two years not going to mention each other
24 and the reality of the blockchain not being used at Chai.

25 Q. And what did you understand the purpose of this gentleman's

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Myung - Direct

1 agreement was?

2 MR. KORNBLAU: Objection. Basis? Foundation.

3 THE COURT: Overruled.

4 A. Well, I mean, like, all the executives and the founders
5 came over from Terraform Labs, and they had a lot of Luna, like
6 life-changing amounts. So by keeping quiet about Chai not
7 using the blockchain, they can fully vest and make lots of
8 money.

9 Q. What did you think about the gentlemen's agreement?

10 MR. KORNBLAU: Objection. Relevance.

11 THE COURT: Well, that depends on what's going to be
12 inquired into on cross. So I will sustain the objection right
13 now, but it may be the subject of rebuttal, depending on the
14 cross. Sustained.

15 MS. STAREN: Your Honor, could we have a sidebar?

16 THE COURT: Sure.

17 (Continued on next page)

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O3RHSec3

Myung - Direct

1 (At sidebar)

2 MS. STAREN: So my expectation is that they're going
3 to bring up the fact that he was a whistleblower. He
4 complained about this.

5 THE COURT: Well, that's why I ruled the way I did,
6 because I figured that this might very well come — be relevant
7 to cross, but —

8 MR. KORNBLAU: Not clear I'm going to be bringing up
9 this gentlemen's agreement on cross. So let's see. If the
10 door is opened, the door is opened.

11 MS. STAREN: But are you going to ask about the fact
12 that he's a whistleblower and say that he's only in it for the
13 money?

14 MR. KORNBLAU: That's certainly possible.

15 MS. STAREN: Then I think we are entitled to get in
16 his view that he actually thought this was legitimately bad, he
17 thought this was a fraud, and he wanted to report it because he
18 thought it was a significant issue that they were lying to the
19 public about what Chai was doing.

20 THE COURT: OK. Yes.

21 (Continued on next page)

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Myung - Direct

(In open court; jurors present)

BY MS. STAREN:

Q. Sorry about that. Let me just go back and repeat the question.

I think what I asked you is what did you think about the gentlemen's agreement that you heard about from Mr. Shin?

A. I thought it was very sketchy.

Q. Why is that?

A. Because clearly there's no technology internally, but that technology's being marketed as existing, that transactions were happening on the blockchain for Chai payments, and that's clearly not the case. But — yeah, I mean, I can understand why they wanted to keep that silent.

Q. Did there come a time when you communicated with Mr. Shin about this gentlemen's agreement again?

A. Yes.

Q. What led to that communication?

A. So at first he told me that they're not going to mention each other, you know, which basically means they're not going to lie going forward. But I saw an article from Do Kwon on the Internet. It was an interview, and he was touting Chai using the Terra blockchain to process and settle transactions, which is very not true.

MS. STAREN: OK. Mr. Haywood, could you please pull up Plaintiff's Exhibit 100 for the witness, please.

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Myung - Direct

1 Q. Mr. Myung, do you recognize this exhibit?

2 A. Yes.

3 Q. What is it?

4 A. It's the article, the interview.

5 Q. OK. Is this a true and accurate copy of that interview you
6 saw?

7 A. Yes.

8 MS. STAREN: OK. We would move to admit Plaintiff's
9 Exhibit 100 into evidence.

10 MR. KORNBLAU: Just a moment, please.

11 MR. MOREL: Your Honor, we don't necessarily object.
12 We just believe some extraneous information in the exhibit
13 should be redacted. We're happy to confer with SEC counsel.

14 THE COURT: We can do that at the next break.

15 MR. KORNBLAU: Same, your Honor. Thank you.

16 THE COURT: Very good. Received subject to possible
17 redactions.

18 MR. MOREL: Thank you.

19 (Plaintiff's Exhibit 100 received in evidence)

20 MS. STAREN: Thank you, Mr. Haywood. You could
21 publish to the jury.

22 BY MS. STAREN:

23 Q. Could you please read the title of this article, Mr. Myung.

24 A. It says, "Interview: Terra CEO discusses Luna, Mirror,
25 Chai, Terraswap, More "

03RHSec3

Myung - Direct

1 Q. Can you read the next part of that title.

2 A. "Luna as surged over 2000 percent over the last 60 days.
3 We sat down with Terra's CEO for a deep dive into all things
4 Terra."

5 Q. Could you please go to page 3 and read the paragraph at the
6 bottom starting with "Do Kwon."

7 A. Yeah, it says: "Chai is one of South Korea's most popular
8 payments apps that recently raised a \$60 million Series B.
9 Through an API called i'mport, Chai enables merchants to accept
10 payments via 20 different options (e.g., debit, credit, PayPal,
11 etc.), with low fees and fast settlements. On the back end,
12 Chai uses Terra's blockchain stablecoin to settle transactions
13 faster and cheaper than legacy counterparts."

14 Q. Then could you go to page 4 and read the paragraph at the
15 top starting with "Do Kwon."

16 A. It says, "Last year Chai processed more than \$2 billion in
17 transaction volume with more than 2.5 million users, making it
18 one of the most successful and widely adopted applications that
19 uses blockchain technology and is not purely speculative in
20 nature."

21 Q. So, Mr. Myung, what about Do Kwon's statements here led you
22 to communicate with Mr. Shin again about that gentlemen's
23 agreement?

24 A. Well, it said that with Terra Chai —

25 MS. STAREN: You can leave it up, Mr. Haywood, sorry,

O3RHSec3

Myung - Direct

1 if he needs to refer to it.

2 A. Yeah, it was the quote before that. Could you pull that
3 up.

4 Yeah. It was specifically about that Chai uses
5 Terra's blockchain to settle transactions faster and cheaper
6 than legacy counterparts.

7 Q. What about that statement made you or led you to
8 communicate with Mr. Shin again?

9 A. It's just completely false, so I brought it up with him
10 again.

11 Q. OK.

12 Mr. Haywood, could you please show the witness
13 Plaintiff's Exhibit 118A.

14 Mr. Myung, do you recognize this document?

15 A. Yes.

16 Q. What is it?

17 A. It's Slack chat between me and Dan.

18 Q. And did you capture this image?

19 A. Yes.

20 Q. OK. Is this a true and accurate copy of the Slack chat
21 that you captured?

22 A. Yes.

23 MS. STAREN: OK. We would move to admit Plaintiff's
24 Exhibit 118A into evidence.

25 MR. KORNBLAU: Objection. Hearsay.

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Myung - Direct

1 THE COURT: Overruled.

2 (Plaintiff's Exhibit 118A received in evidence)

3 MS. STAREN: Thanks. Mr. Haywood, you can publish to
4 the jury.

5 BY MS. STAREN:

6 Q. Mr. Myung, can you please explain, what is Slack?

7 A. Slack is a business chatting software.

8 Q. It's a way to communicate messages back and forth?

9 A. Yeah, within the company.

10 Q. OK. Did you use Slack often to communicate with Mr. Shin?

11 A. Yes, every day.

12 Q. Let's start with your message to Mr. Shin at the top. Can
13 you please read the date of that message.

14 A. Yeah, it's August 13, 2021.

15 Q. Can you please read your message.

16 A. Yeah. It says, "This is an interview of Do from Tokenist
17 regarding Chai in March 2021. He says that 'Chai uses Terra's
18 blockchain to settle transactions faster and cheaper than
19 legacy counterparts.'"

20 Q. Can you please tell me what these two images are below.

21 A. Yeah, it's a screenshot from that article.

22 Q. And did Mr. Shin respond to you?

23 A. Yes.

24 Q. What was the date of his response?

25 A. August 14, 2021.

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Myung - Direct

1 Q. Was that the next day?

2 A. I think so. Yes.

3 Q. And can you please read his response to you.

4 A. He says, "Yeah, as I said, we have a look-the-other-way
5 handshake (confidential) for two years."

6 Q. What did you understand Mr. Shin was referring to when he
7 said "a look-the-other-way handshake (confidential)"?

8 A. That was the gentlemen's agreement that we had discussed
9 that he told me about.

10 Q. And underneath his message, it says "edited" in
11 parentheses. Do you have an understanding as to what that
12 refers to?

13 A. Yeah. So the sender of a message can edit their own
14 message.

15 Q. And is that something particular to Slack?

16 A. Well, like, a lot of messaging apps have that, but Slack
17 has that, yeah.

18 Q. OK. And when you say the sender of the message, in this
19 case was that Dan Shin?

20 A. Yes.

21 Q. Do you recall Dan Shin editing his message?

22 A. I do.

23 Q. And do you recall what was different about his previous
24 message and this one?

25 A. It was a more detailed contents of our gentlemen's

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Myung - Direct

1 agreement. He just simplified it down to one sentence.

2 Q. OK. So the prior — just to clarify, the prior message was
3 a more detailed —

4 A. Yes.

5 Q. — description?

6 A. Yes.

7 Q. OK. Can you please read your response.

8 A. Yeah. Says, "I'm OK with a moratorium. I just thought
9 that it would be both sided and not one sided."

10 Q. What did you mean by that?

11 A. Well, this gentlemen's agreement, I thought basically Chai
12 and Terra both would just be silent about the reality of the
13 fake transactions. But seeing the news article come out,
14 clearly Do has been talking about it. So that's what it means
15 by both sided and one sided.

16 Q. OK. Did you continue to have concerns about this
17 gentlemen's agreement?

18 A. Yes.

19 MS. STAREN: Mr. Haywood, could you please show
20 Mr. Myung Plaintiff's Exhibit 119.

21 Q. Mr. Myung, do you recognize Plaintiff's Exhibit 119?

22 A. Yes.

23 Q. And what is it?

24 A. It's another Slack chat between me and Dan.

25 Q. And is this also something you captured on your phone?

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Myung - Direct

1 A. Yes.

2 Q. And is this a true and accurate copy of the Slack chat that
3 you captured?

4 A. Yes.

5 MS. STAREN: We would move to admit Plaintiff's
6 Exhibit 119 into evidence.

7 MR. KORNBLAU: Objection. Hearsay.

8 THE COURT: Overruled.

9 (Plaintiff's Exhibit 119 received in evidence)

10 MS. STAREN: Let's start with the chat at the top from
11 Aaron. Could you pull that one out, please, Mr. Haywood.

12 BY MS. STAREN:

13 Q. Mr. Myung, what is the date of this top chat from you?

14 A. It's August 15, 2021.

15 Q. Could you please read your first sentence here.

16 A. Yeah. It says, "It could be possible to have it as our
17 lowest possible priority which we never get around to doing,
18 but it could be consistent with the narrative that Do is
19 projecting."

20 Q. What are you referring to here?

21 A. I am basically saying that we should at least have it on a
22 roadmap to use blockchain technology for payments because that
23 is Do — because Do is already — because Do Kwon is already
24 marketing it as something that already exists in reality.

25 Q. OK. Could you please read at the bottom Dan Shin's — or

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Myung - Direct

1 Dan's response.

2 A. Yeah. It says, "I'd rather not spend my energy here.
3 Really a low priority item for me and not something I can place
4 on my plate right now."

5 MS. STAREN: I'm sorry. Mr. Haywood, could you
6 please, it looks like it continues on to the next page. Can
7 you pull up the next section, the top paragraph.

8 A. He says, "Terra narrative really only penetrates the
9 blockchain followership, which I believe is quite narrow in the
10 broader sense of things."

11 Q. What did you understand Dan Shin meant by that?

12 A. He doesn't really want to get this on our roadmap because
13 this is really — that narrative, you know, is really only,
14 like, relevant to the crypto investors.

15 MR. MOREL: Objection. Foundation. Move to strike.

16 THE COURT: Hang on.

17 Overruled.

18 Q. And if you go to the — his response at the bottom of that
19 section, that page, did Mr. Shin provide further explanation
20 about the gentlemen's agreement there?

21 A. Yeah. He said, "The idea was that as Terra becomes more
22 diversified, he would have less and less reason to mention
23 Chai. Not a lot of people read Coin Media, especially in
24 English, so let's wait and see."

25 Q. Now, here when Mr. Shin is saying "he would have less and

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Myung - Direct

1 less reason," who is "he"?

2 A. That's Do Kwon.

3 Q. OK. What did you understand Mr. Shin was saying here?

4 A. It means that over time Terra does not have to rely on Chai
5 for its value. It's going to go and create different products.
6 And basically the people who read the Coin Media, I mean,
7 especially in English, he says, so people outside of Korea will
8 read it, and they can invest based on Coin Media, so . . .

9 Q. OK. Did you have any understanding about whether Chai
10 transactions were somehow reflected on the Terra blockchain?

11 A. Yeah. So once the payments are actually executed through
12 the centralized databases through Chai, that transaction
13 history would just be basically copied and pasted onto the
14 Terra blockchain to make it seem as if the transactions
15 actually happened on the blockchain.

16 Q. And —

17 MR. KORNBLAU: Objection. Foundation. Move to
18 strike.

19 MS. STAREN: If it helps, your Honor —

20 THE COURT: The objection on lack of foundation is
21 sustained, but if you can lay a foundation, please do so.

22 How do you know what you just told us?

23 THE WITNESS: Well, my conversations with him. But,
24 specifically, this Slack chat is he's spelling out exactly the
25 idea.

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Myung - Direct

1 THE COURT: OK. So this is based on your experience
2 and knowledge and familiarity with the company. This is the
3 inference you drew from what he's saying there. Do I have that
4 right?

5 THE WITNESS: Yeah, from his direct language.

6 THE COURT: All right. The objection is overruled.

7 BY MS. STAREN:

8 Q. Can you tell me, was there a way that the public could go
9 online and see the Chai transactions reflected on the Terra
10 blockchain?

11 A. Yeah. So there was something called ChaiScan, and if you
12 went on ChaiScan, it's a website, and it shows basically, like,
13 these charts, you know, like all these real-time transactions.
14 And I put that in quotes. Basically, it represents that these
15 are Chai's transactions happening on the blockchain.

16 Q. OK. Did you have an understanding as to whether Terraform
17 had any role in publicizing ChaiScan?

18 A. Yeah, it was on their homepage.

19 Q. When you say "it was on their homepage," do you mean
20 Terraform's homepage?

21 A. It was on the terra.money homepage. It was on the front
22 page, big button, that says "see metrics."

23 Q. And if you clicked that button, where did you go?

24 A. It goes to ChaiScan.

25 Q. OK. I think you mentioned earlier that you learned at some

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Myung - Direct

1 point that Chai transactions were being copied onto the Terra
2 blockchain, is that right?

3 A. Yes.

4 Q. OK. How did you learn this?

5 A. I learned through Ji'Hoon Kim.

6 MS. STAREN: At this point, Mr. Haywood, could you
7 show the witness only Plaintiff's Exhibit 121.

8 Q. Mr. Myung, do you recognize Plaintiff's Exhibit 121?

9 A. It's not on my screen yet.

10 Q. Oh, you're right, it's not.

11 A. Yes.

12 Q. What is this?

13 A. It's a Slack chat between me and Ji'Hoon.

14 Q. Again, is this a screenshot that you took?

15 A. Yeah.

16 Q. And is this a true and accurate copy of the screenshot that
17 you took?

18 A. Yes.

19 MS. STAREN: We would move to admit Plaintiff's
20 Exhibit 121 into evidence.

21 MR. KORNBLAU: Objection. Hearsay, your Honor.

22 THE COURT: Overruled.

23 (Plaintiff's Exhibit 121 received in evidence)

24 BY MS. STAREN:

25 Q. OK. Let's focus on the first email — or first chat from

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Myung - Direct

1 you, Aaron.

2 What is the date?

3 A. It's September 30, 2021.

4 Q. Who are you writing to?

5 A. Ji'Hoon Kim.

6 Q. And can you please read your message to Mr. Kim.

7 A. Says, "This is confidential, but I may be going into more
8 crypto route at Chai with the bolt. Currently, how integrated
9 is Terra with Chai? In my understanding, the payments are sent
10 and managed through the centralized database, though the
11 transactions are mirrored separately on Terra."

12 Q. What is the centralized database that you're referring to
13 there?

14 A. That's just the Chai systems.

15 Q. What currency was used by Chai to make the payments from
16 that centralized database?

17 A. Korean won.

18 Q. And when you said "though the transactions are mirrored
19 separately on Terra," what did you mean by that?

20 A. It just means that transactions are copied onto the
21 blockchain to pretend that it's real.

22 Q. Did you have an understanding as to how Terra received
23 information about the Chai transactions?

24 A. Yeah, through the LP server.

25 Q. OK. Did Ji'Hoon Kim respond to your question here about

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Myung - Direct

1 how — I think you said how integrated is Terra with Chai? Did
2 Ji'Hoon Kim respond?

3 A. Say again.

4 Q. Did Ji'Hoon Kim respond to your question how integrated is
5 Terra with Chai?

6 A. Yeah, looks like it.

7 Q. So if you go to the bottom and pull out Ji'Hoon Kim's
8 response, could you please read that.

9 A. Yeah. It says, "Only Chai transaction history is mirrored
10 to Terra network, so there is no wallet or token concept in
11 Chai."

12 Q. Again, what did you understand he meant by "only Chai
13 transaction history is mirrored to Terra network"?

14 A. So the transaction history is copied and pasted onto the
15 Terra blockchain, and at Chai there is no wallet, no crypto
16 wallet and no crypto token concept in Chai.

17 Q. And what did you understand that means, there's no wallet
18 or token concept in Chai?

19 A. There's no crypto, period, at Chai.

20 Q. OK. Now, apart from Dan Shin, did you communicate with
21 anyone else about your concerns with Do Kwon's representations
22 about Chai?

23 A. Yes.

24 Q. And who, generally, did you communicate these concerns
25 with?

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Myung - Direct

1 A. To executives and investors.

2 Q. And you're referring to executives and investors with Chai?

3 A. Yes.

4 Q. And did you tell any of these Chai executives and investors
5 your understanding that Chai was not using the blockchain?

6 A. Yes.

7 MR. MOREL: Objection. Leading.

8 THE COURT: I'll allow it, but be careful about
9 leading.

10 Q. Did any of these individuals express any surprise?

11 A. No.

12 Q. Were these verbal, mostly verbal, or written
13 communications?

14 MR. KORNBLAU: Objection. Leading.

15 A. They were all verbal.

16 THE COURT: No, when there's an objection, you need to
17 wait.

18 THE WITNESS: I'm sorry.

19 THE COURT: Overruled. So the answer was they were
20 all verbal. Go ahead.

21 Q. Did there come a time when you began to record your
22 conversations?

23 A. Yes.

24 Q. Approximately when was the first time that you began to
25 record conversations?

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Myung - Direct

1 A. Towards the end of 2021.

2 Q. And when you recorded these conversations, did you tell the
3 other person you were recording them?

4 A. No, I did not.

5 Q. Why did you record these conversations?

6 A. Because I needed to protect myself because these are all
7 fake transactions happening on the blockchain.

8 Q. I think you said you first started recording towards the
9 end of 2021, is that right?

10 A. Yes.

11 Q. Did there come a time when you recorded a conversation with
12 Ji'Hoon Kim?

13 A. Yes.

14 Q. OK. And do you recall approximately when that was?

15 A. It was towards the end of the year.

16 Q. And where did this conversation take place?

17 A. It happened at the Chai office.

18 Q. Was anyone else present during this conversation?

19 A. Just me and him.

20 Q. And approximately how long was this conversation?

21 A. About an hour.

22 Q. Did you record this conversation?

23 A. Yes.

24 Q. Did you record the entirety of the conversation?

25 A. Yes.

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Myung - Direct

1 Q. So at this time I want to ask, Mr. Myung, were you, I
2 guess, played a recording of that Ji'Hoon Kim conversation?

3 A. I'm sorry?

4 Q. Sorry. Have you been played a recording of that Ji'Hoon
5 Kim conversation?

6 THE COURT: Did you review that recording?

7 A. Oh, yes.

8 Q. OK. And we marked it as Plaintiff's Exhibit 122A, and you
9 reviewed that, the full recording, is that correct?

10 A. Yes.

11 Q. OK. And did you recognize that recording as the recording
12 you made with Ji'Hoon Kim?

13 A. Yes.

14 Q. OK. Was that a complete and accurate copy of that
15 recording?

16 A. Yes.

17 Q. OK. Do you know whether a transcript was made of that
18 recording?

19 A. Yes.

20 Q. Did you have an opportunity to review that transcript?

21 A. Yes.

22 Q. Was that a true and accurate transcript of the Ji'Hoon Kim
23 recording?

24 A. Yes.

25 MS. STAREN: OK. So I think at this time we would

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Myung - Direct

1 move to admit Plaintiff's Exhibit 122A, which is the recording,
2 the Ji'Hoon Kim recording, into evidence. And we would intend
3 to play only short clips from it with a relevant portion of the
4 transcript rolling over.

5 MR. KORNBLAU: Objection. Hearsay, your Honor.

6 THE COURT: The objection to hearsay is overruled.
7 The underlying recording is received. The transcripts are
8 received only as an aid to the jury. In other words,
9 ultimately, it's the recording that's in evidence, but you can
10 use the transcript to help you follow the recording.

11 So go ahead, counsel.

12 MS. STAREN: Thank you, your Honor.

13 (Plaintiff's Exhibit 122A received in evidence)

14 BY MS. STAREN:

15 Q. Before we get to the first clip, Mr. Myung —

16 THE COURT: Bear in mind, we're going to give the jury
17 their lunch break in five minutes, so you might want to adjust
18 to that fact.

19 MS. STAREN: Oh, boy. OK.

20 THE COURT: Do you want —

21 MS. STAREN: Let's stop here, actually.

22 THE COURT: Yes, I thought you might pick up the hint.

23 All right. So, ladies and gentlemen, we'll give you
24 your lunch break now. Resume at five minutes before 2:00.

25 (Jury excused)

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Myung - Direct

(Continued on next page)

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1 (Jury not present)

2 THE COURT: Please be seated.

3 OK. So you have copies of the transcript for the —
4 do you have it for the jurors?

5 MS. STAREN: Oh.

6 THE COURT: Or it will appear on the screen?

7 MS. STAREN: Yeah, we're going to have it roll over
8 the screen.

9 THE COURT: Very good. Anything else we need to take
10 up now?

11 MR. PELLEGRINO: Just briefly, your Honor, more on
12 that professional reader issue that I mentioned. The SEC has
13 responded that they would prefer to use an SEC law clerk. We
14 object to that. We think it's a time-honored tradition of
15 having someone neutral read it. The issue here is that we're
16 both proponents of this evidence. So our proposal is that the
17 reader comes in and whichever designations and
18 counter-designations the Court has allowed, the reader would
19 simply read those. Rather than having someone who works for
20 the SEC, this person is neutral. They wouldn't know which side
21 is designated what. We think this has been done since time
22 immemorial. It's done less often —

23 THE COURT: I don't about time immemorial. I am, of
24 course, the person in this courtroom who's the best expert on
25 time immemorial.

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1 MR. PELLEGRINO: Certainly.

2 THE COURT: But anyway, so who's paying?

3 MR. PELLEGRINO: Well, we are, your Honor. But they
4 have no knowledge of the case. They don't know which side has
5 designated what. These are people who are actors or do books
6 on tape. They just read it. And given the content, we think
7 the jury could appreciate someone doing that rather than having
8 someone just read about LP server and NAVER Cloud, and so on.

9 THE COURT: Yeah, I don't see the problem with that,
10 so OK.

11 MR. PELLEGRINO: Thank you, your Honor.

12 THE COURT: All right. We'll see you all five minutes
13 before 2:00. I made the final, I hope, Paul Kim ruling. So
14 we'll hand that out to you now as well.

15 (Lunch recess)

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Afternoon session

2:11 p.m.

(In open court; jury not present)

THE COURT: Just so everyone knows, we're going today and tomorrow until 3:30 and on Friday to 4:30 and we'll start each day at 9:30, except you guys may have to come in at 9:00 but we'll think about that.

Yes?

MR. CARNEY: Your Honor, can I raise two quick expert issues and then I think my colleague has an issue too.

THE COURT: Yes.

MR. CARNEY: The SEC had planned to call our blockchain expert tomorrow, Dr. Edman, but we're mindful of your Honor's request, and we recall your students here at the Daubert hearing, and we want to give them the opportunity to see the next stage.

THE COURT: Different group.

MR. CARNEY: A different group of students, but we're mindful for that, so we are making some calls to see if we can move things around. I can't promise --

THE COURT: As I say, it's a request, but certainly not an order. If you can't do it, you can't do it. Thank you.

MR. CARNEY: Thank you, your Honor. And separate expert request, and we just wanted to seek your Honor's guidance with respect to rebuttal testimony. We understood that your Honor wanted all testimony that could be induced in

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1 the case in chief, to do it then. But with respect to our one
2 expert, Dr. Bruce Mizrach, your Honor might recall the
3 defendants have an expert who was retained specifically to
4 address his model and his testimony and we just wanted to
5 understand if your Honor expected Professor Mizrach to address
6 Professor Hendershott's criticisms when he's on direct in our
7 case in chief, or whether he would have an opportunity to come
8 back in rebuttal and speak to those critiques.

9 THE COURT: I think I'd prefer to have him address
10 that on your case in chief.

11 MR. CARNEY: Thank you, your Honor.

12 MS. CUELLAR: And then, your Honor, just one issue.
13 The parties have conferred on the witnesses for the adverse
14 inference for the *LiButti* factors. We understood the Court's
15 direction that the witnesses should come here absent of the
16 agreement. We have consulted with the counsels for those two
17 witnesses and they have said they will move to quash the
18 subpoena. So we just wanted to get your final instruction that
19 the two witnesses do indeed have to come here to establish the
20 factors, and we'll let them know and they can call the Court
21 and do what they may.

22 THE COURT: That's fine. So I think that will --
23 that's a good -- that is certainly something that should occur
24 at 9:00 on the relevant day or days so that we don't waste the
25 jury's time with that.

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1 MS. CUELLAR: Understood, your Honor. Thank you.

2 MR. KORNBLAU: Your Honor, may we have a continuing
3 objection on hearsay grounds to the recordings by Mr. Myung so
4 I don't have to keep interrupting the flow.

5 THE COURT: Yes. Although I didn't really understand
6 in some of your earlier objections to some of the documents.
7 So the most of his conversations were with a Terraform
8 principal. So the Terraform principals' statements were
9 statements of a party adversary. And most of the witness's
10 statements were really often just questions, which are never
11 hearsay. A question doesn't assert any fact, just ask the
12 question.

13 So I wasn't quite sure what the basis of your
14 objection was.

15 MR. KORNBLAU: There were different issues, your
16 Honor. But one was that, you know, we take the view that Chai
17 is a different company, so a statement by Chai or a Chai
18 employee --

19 THE COURT: I see.

20 MR. KORNBLAU: Is hearsay.

21 THE COURT: I think I've already indicated that for
22 the purposes offered here that they reviewed as
23 co-conspirators. So there was the co-conspirator exception as
24 well as other hearsay objections.

25 MR. KORNBLAU: And I understand that, your Honor. We

O3RASEC4

1 just want to make our record that we object.

2 THE COURT: No, I like your idea of a continuing
3 objection. That's fine.

4 MR. PATTON: Your Honor, just one further point, which
5 is I passed up to your deputy our proposed curative
6 instruction.

7 THE COURT: Oh. Only two single spaced pages.

8 MR. PATTON: Well, in our defense, one of those pages
9 is just to provide your Honor what Judge Seibel gave in the one
10 that I referenced in the argument this morning. So it's one
11 page. Attached is basically an exhibit.

12 THE COURT: Well, I can tell you right now, I'm not
13 going to give this. I will look at it and see if there's
14 individual sentences I might adopt. But the first paragraph
15 looks like what I normally give.

16 MR. PATTON: The remainder relates to the issue of the
17 hypothetical about if you had known, which was the subject of
18 the Judge Seibel curative instruction that I was referencing
19 earlier.

20 THE COURT: So, I'm sorry. So these are two --
21 there's first your version and then there's her version, but
22 you're not asking for both? You're asking for one or the
23 other; is that it?

24 MR. PATTON: One page is our requested curative
25 instruction. The other page is just for your reference, the

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1 actual curative instruction that Judge Seibel gave.

2 THE COURT: Yeah. By the way, I'm not at all sure
3 that I agree with what you seem to have indicated was her
4 initial -- was her rejection of her initial view. But maybe I
5 misunderstood.

6 If I become aware that the, in this case, the
7 cofounder of a company is intentionally lying to me about the
8 company, why isn't that material alone? As opposed to whether
9 he's lying about material element.

10 MR. PATTON: Well, I guess I would start with the
11 premise that I don't think that's part of the SEC's claim.

12 But I think that the Second Circuit, and I'll have to
13 take a look at this, but has talked about in places that the
14 substance of the misrepresentations still has to be material.
15 It's not just the fact of a misrepresentation.

16 THE COURT: Well, I would distinguish -- but I'll be
17 happy to look at any case you have. I don't think we'll
18 necessarily have to reach it in this case in any event, but
19 just out of curiosity, I would think it would depend in part on
20 whether you understand that the lie was told intentionally, and
21 that it's being -- by the head of the company. That seems to
22 me to be a different kind of situation from where the question
23 is whether some mid-level person unintentionally told a lie
24 about some peripheral matter.

25 But in any case, I think it's going to be moot in this

O3RASEC4

1 case because the SEC is the -- the lies I've seen so far, the
2 alleged lies, I understand you're disputing that, are all about
3 material matters. But I'm just curious now, if I were a
4 reasonable investor and it's an objective test, and I knew that
5 the head of the company was purposely lying to me about some,
6 in the hypothetical, minor aspect of the company's business,
7 why would I nevertheless regard that as material, because how
8 could I make an investment in a company where the head guy
9 purposely sets out to deceive me.

10 MR. PATTON: I just don't think that's the law, your
11 Honor.

12 THE COURT: If it's not the law, then it's not. And I
13 will, you know -- that's to say I think it's going to be moot
14 in this case anyway. But now you've got my curiosity going.

15 Okay. Let's bring in the witness and let's bring in
16 the jury.

17 MR. FERRARA: Your Honor, could we mark that as Court
18 Exhibit 1.

19 THE COURT: No, because I already marked the
20 preliminary instruction as Court Exhibit, but if you'd like to
21 mark it as Court Exhibit 2.

22 MR. FERRARA: Pardon me. Yes. Thank you, your Honor.

23 THE COURT: Okay.

24 (Continued on next page)

O3RASEC4

Myung - Direct

1 (In open court; jury present)

2 THE COURT: Please be seated. Ladies and gentlemen,
3 we're going only to 3:30 p.m. today because of some other
4 matters I have, and that will also be true tomorrow. On
5 Friday, however, we will go until 4:30. So I just wanted to
6 give you a heads up. And each of those days we'll start at
7 9:30.

8 So go ahead, counsel. There you are.

9 MS. STAREN: Thank you, your Honor.

10 AARON MYUNG, resumed.

11 DIRECT EXAMINATION CONTINUED

12 BY MS. STAREN:

13 Q. Good afternoon, Mr. Myung.

14 Before we took our break we had just introduced
15 Plaintiff's Exhibit 122a, which was the conversation that you
16 had recorded with Mr. Ji'Hoon Kim; is that right?

17 A. Yes.

18 Q. Could you please describe generally what you and Mr. Kim
19 were discussing in that conversation?

20 A. We were talking about how Chai uses, you know, like the
21 whole, like the mirroring process of the Chai transaction data
22 being copied onto the blockchain.

23 MS. STAREN: Okay. Mr. Haywood, could you please play
24 clip one. I'm sorry, Plaintiff's Exhibit 122a, clip one.

25 MR. KORNBLAU: Your Honor, we have our continuing

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Myung - Direct

1 objection, right?

2 THE COURT: Yeah.

3 MR. KORNBLAU: We'll just leave that.

4 (Video played)

5 BY MS. STAREN:

6 Q. Okay. And just for clarification purposes, the first voice
7 on that recording, who was that?

8 A. That's Ji'Hoon Kim, the head of engineering.

9 Q. Okay. And the second voice was?

10 A. That's me.

11 Q. Okay. And in the recording, what did you understand
12 Ji'Hoon Kim when he said, "actually there's no crypto going on
13 within Chai?"

14 A. He meant that there's no crypto going on in Chai.

15 Q. Okay. And was that consistent with what you had observed
16 working at Chai?

17 A. Yes.

18 Q. And he said -- do you know what he -- Mr. Ji'Hoon Kim meant
19 when he referred to "it's in mirror?"

20 A. Oh, so mirror is a euphemism for copy, so you copy it onto
21 the blockchain.

22 Q. And when you say you copy it onto the blockchain, what was
23 being copied on to the blockchain?

24 A. The transaction data.

25 Q. Is that the Chai transaction data?

O3RASEC4

Myung - Direct

1 A. Yeah, the Chai transaction data.

2 MS. STAREN: Okay. Mr. Haywood, could you please play
3 Plaintiff's Exhibit 122a, clip two.

4 (Video played)

5 MS. STAREN: Thank you, Mr. Haywood.

6 Q. So, Mr. Myung, in this clip, Ji'Hoon Kim mentions something
7 called an LP server. Had you heard reference to an LP server
8 before this?

9 A. Not really. I mean, like vague references maybe, but this
10 is the first time I got clarity on it.

11 Q. Okay. And what did you understand Ji'Hoon Kim was saying
12 about the LP server's role with respect to copying Chai
13 transactions on the blockchain?

14 A. So the transaction data is sent to the LP server and the LP
15 server just literally just replays the transactions on the
16 blockchain as if they were the real transactions. So these are
17 like carbon copies.

18 Q. Okay. And so when Ji'Hoon Kim said the LP server's job is
19 to send this transaction data to Terra and then "it's their job
20 to write or create a block for these."

21 Who did you understand was their -- whose job was it
22 that you understood?

23 A. Terraform Labs.

24 Q. And did you have an understanding of who sent Chai
25 transaction data to Terraform Labs?

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Myung - Direct

1 A. I'm not really sure about that portion.

2 Q. Okay. Did you directly interact with the LP server in the
3 course of carrying out your role as chief product officer at
4 Chai?

5 A. No. I had no reason to.

6 Q. And what about this legal issue that Ji'Hoon Kim was
7 referring to? What did you understand that meant?

8 A. In Korea, you cannot use a blockchain to process or settle
9 transactions.

10 Q. And there was a reference here to October of 2019 for the
11 timeframe in which Terraform and Chai split. Is that -- was
12 that accurate?

13 A. Well, he said last year and the year before was 2020.

14 Q. Okay. So what is your testimony as to when Chai and
15 Terraform split?

16 A. That was 2020.

17 Q. Okay.

18 MS. STAREN: Mr. Haywood, could you please play
19 Plaintiff's Exhibit 122a, clip three.

20 (Video played)

21 Q. So here, who was that, by the way?

22 A. That was Ji'Hoon Kim, head of engineering.

23 Q. Okay. And his statement that Chai is not using blockchain
24 technology at all, was that consistent with your understanding
25 of what you learned as senior advisor and chief product officer

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Myung - Direct

1 at Chai?

2 MR. KORNBLAU: Objection. Leading.

3 THE COURT: Overruled.

4 A. Yes.

5 Q. Okay. Did there come a time when you recorded a
6 conversation with an individual named Jinny Baek?

7 A. Yes.

8 Q. Who was Jinny Baek?

9 A. He was a chief financial officer, the CFO.

10 Q. For Chai?

11 A. Yes.

12 Q. And do you recall approximately when that conversation
13 occurred?

14 A. It was approximately same time period, at the end of 2021.

15 Q. Okay. And where did that conversation take place?

16 A. Happened in a cafe in Seoul.

17 Q. Was anyone else present during that conversation?

18 A. No.

19 Q. And approximately how long was that conversation?

20 A. Approximately an hour.

21 Q. And did you record the entirety of that conversation?

22 A. Yes.

23 Q. Okay. So earlier did you have an opportunity to review
24 the -- a copy of the recording of your conversation with Jinny
25 Baek with the SEC?

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Myung - Direct

1 A. Yes.

2 Q. And that was marked as Plaintiff's Exhibit 123a. Did you
3 recognize that recording?

4 A. Yes.

5 Q. And was that recording a complete and accurate copy of the
6 recording that you made of your conversation with Jinny Baek?

7 A. Yes.

8 Q. Do you know whether a transcript was made of that
9 recording?

10 A. Yes.

11 Q. And did you have an opportunity to review that transcript?

12 A. Yes.

13 Q. And was that a true and accurate transcript of the Jinny
14 Baek recording?

15 A. Yes.

16 MS. STAREN: Okay. Your Honor, at this time we would
17 move to admit Plaintiff's Exhibit 123a into evidence.

18 THE COURT: Any objection?

19 MR. KORNBLAU: Objection.

20 THE COURT: Oh, on the same grounds. I'm sorry. Just
21 on the continuing ground.

22 MR. KORNBLAU: Yes, your Honor.

23 THE COURT: Yeah. I'm sorry. Overruled. It's
24 received and the transcript is not received as evidence. But
25 can be used as an aid to the jury.

O3RASEC4

Myung - Direct

1 MS. STAREN: Thank you, your Honor.

2 (Plaintiff's Exhibit 123a received in evidence)

3 Q. Before we play the first clip, can you just describe
4 generally what you and Jinny Baek discussed during that
5 conversation?

6 A. Yeah. We were just talking about the misrepresentations
7 that's being made in the public regarding the transactions.
8 And that no blockchain is ever being used. And I'm trying to
9 get Jinny on my side to try to like clean up these
10 misrepresentations.

11 MS. STAREN: Mr. Haywood, could you please play the
12 clip from Plaintiff's Exhibit 123a.

13 (Video played)

14 MR. KORNBLAU: Can we pause please? Your Honor, we
15 object to this. It's completely incomprehensible.

16 THE COURT: I don't think so. Overruled.

17 MS. STAREN: You can continue, Mr. Haywood.

18 THE COURT: I thought you were going to make a
19 different objection, which was that it's not in furtherance of
20 the conspiracy.

21 MR. KORNBLAU: Well, we've definitely made that
22 argument for all of these, your Honor.

23 THE COURT: I don't know but this is very different
24 from the -- well, come to the side bar.

25 (Continued on next page)

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Myung - Direct

1 (At sidebar)

2 THE COURT: So it's one thing when the witness is
3 having a conversation with previous folks and they're basically
4 trying to convince him to continue the conspiracy or at least
5 giving false exculpatory responses. Those would all come in.
6 And plus there's statements against interest in many respects.

7 Here, as I understand it, as he just testified, he's
8 trying to convince this person to expose the fraud, the alleged
9 fraud, and the person is maybe resisting. I didn't find it
10 incomprehensible at all. But why is that in furtherance of the
11 conspiracy?

12 MS. STAREN: So I think our position is that he's
13 saying, well, yeah, we know there's no connection between Chai
14 and Terra, but nobody at Chai is saying anything. So it's not
15 an issue for us, and I think that that is a statement in
16 furtherance of that gentleman's agreement, which is the idea
17 that.

18 THE COURT: I see.

19 MS. STAREN: As long as Chai doesn't say anything
20 we're going to be --

21 THE COURT: So he's trying to promote the gentleman's
22 agreement is what you're saying?

23 MS. STAREN: That's my understanding what he's saying
24 here.

25 MR. KORNBLAU: Your Honor, we might want to make a

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Myung - Direct

1 record if possible whether Mr. Myung himself believes he's part
2 of a conspiracy or furthering a conspiracy, rather than
3 collecting evidence to provide to the SEC, which is a different
4 thing.

5 THE COURT: Well, putting that aside, at this point
6 was he acting as an agent of the SEC? No, right? This is well
7 before.

8 MS. STAREN: No.

9 MR. KORNBLAU: No, this is after he filed
10 whistleblower complaint, absolutely.

11 MS. STAREN: But he didn't speak until May of 2022,
12 but he filed a complaint on October --

13 MR. KORNBLAU: Second.

14 THE COURT: In any event, no one is suggesting he's a
15 co-conspirator. The question is whether the other person is a
16 co-conspirator.

17 MR. KORNBLAU: The question is whether the statement
18 is in furtherance of to him.

19 THE COURT: Right.

20 MS. STAREN: Which I think it is because that's where
21 he's saying --

22 THE COURT: So during the course of the conspiracy,
23 someone who is skeptical of conspiracy says, you know, what
24 about this, what about that. And one of the co-conspirators
25 says, oh, this is fine, this is how we're working it, or says

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Myung - Direct

1 anything designed to further it, that's a statement of
2 furtherance, the conspiracy by that other person. But this may
3 be different because here, he's trying to convince her to --

4 MR. KORNBLAU: Come to his side.

5 THE COURT: To withdraw from the conspiracy.

6 MS. STAREN: But he's saying no, nobody here from
7 Chai --

8 THE COURT: He's resisting. All right. Tentatively
9 I'm going to rule, allow it to stay in, but if we have to
10 strike it, I'll think about it over the next few minutes.

11 While we're at the side bar -- well, no, where is
12 Mr. Patton?

13 MR. FERRARA: You want me to grab him?

14 THE COURT: I'll tell you and you can repeat it to
15 him. I've looked now at Court Exhibit 2, and I don't think it
16 is even right on the law in many of the respects offered. And
17 nor do I think the situation is at all the same as apparently
18 confronted Judge Seibel. I will give the first few sentences
19 along the lines I already indicated I will give, and I will
20 give them at the appropriate opportunity. But the rest of it
21 is denied.

22 MR. FERRARA: Your Honor, you invited us to maybe show
23 you something --

24 THE COURT: I can't hear you.

25 MR. FERRARA: I'm sorry. Your Honor had invited us to

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Myung - Direct

1 maybe show you a case or two on the topic. May we still
2 tomorrow morning?

3 THE COURT: Tomorrow morning is fine.

4 MR. FERRARA: And, your Honor, we may ask of a limited
5 instruction on the use of these recordings because Mr. Myung
6 himself is doing a lot of the talking. And unless it's adopted
7 by the co-conspirator thing, I don't think that portion will
8 come in for the truth.

9 THE COURT: Well, that's an interesting point too.
10 Maybe tonight someone can give me a copy of this transcript and
11 I'll take a more detailed look at it. But for now, let's go
12 forward.

13 MR. PATTON: Your Honor, for the record, could we mark
14 our proposed instruction as a Court Exhibit?

15 THE COURT: No, at your college request, I've already
16 marked it. You really need to listen.

17 (Continued on next page)

O3RASEC4

Myung - Direct

(In open court; jury present)

MS. STAREN: Mr. Haywood, you can continue playing the video.

(Video played)

MS. STAREN: Thank you.

Q. Mr. Myung, when Jinny Baek said here -- actually let's back up.

Could you please explain what you and Jinny Baek were discussing when you referred to Chai's connection with Terra?

A. It's about Chai using the Terra blockchain to process the transactions.

Q. Okay. And then when Jinny Baek said, "in that case, I think it's a misrepresentation by Do." What is the "it's" that you understood he was saying was the misrepresentation by Do?

A. Like the fact that Chai has anything in relation with Terra processing transactions.

Q. Okay. Did there come a time, when you recorded a conversation with Daniel Shin?

A. Yes.

Q. And just to clarify, Daniel Shin was the CEO of Chai; is that right?

A. Yes.

Q. And do you recall when the first time was that you recorded Mr. Shin?

A. Could have been towards the tail end of 2021. Or, hold on.

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Myung - Direct

1 Yeah, yeah, yeah. Or early 2022.

2 Q. Okay. And where did that conversation take place or how
3 did that conversation take place?

4 A. So we were talking about like how these are being
5 misrepresented so that was --

6 Q. Sorry. I'm going to stop you. I was just asking, you
7 know, was it in person conversation or was it something
8 different?

9 A. I'm trying to get like a timeline. So like in terms of
10 like the recordings or like actual conversations?

11 Q. The recording, the first recording you made.

12 A. Oh, the recordings.

13 Q. Yeah.

14 A. Okay. That's either late 2021 or early 2022.

15 Q. Okay. Do you recall whether it was a video call?

16 A. Yeah, it was a video call.

17 Q. Okay. Did anyone else participate?

18 A. No.

19 Q. And do you know approximately how long the conversation
20 was?

21 A. Approximately one hour.

22 Q. And did you record the entirety of that video call?

23 A. Yes.

24 Q. Okay. Did you have an opportunity to review that Dan Shin
25 recording that the SEC marked as Plaintiff's Exhibit 124a?

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Myung - Direct

1 A. Yes.

2 Q. And when you reviewed that Dan Shin recording, was it a
3 complete and accurate copy of the recording that you made?

4 A. Yes.

5 Q. And do you know whether a transcript was made of that
6 recording?

7 A. Yes.

8 Q. And did you have an opportunity to review that transcript?

9 A. Yes.

10 Q. And was that a true and accurate transcript of the Daniel
11 Shin recording?

12 A. Yes.

13 MS. STAREN: At this time, we would move to admit
14 Plaintiff's Exhibit 124a into evidence.

15 THE COURT: And so the continuing objection is
16 overruled. The transcript is received not in evidence, but
17 only as an aid to the jury, but the recording is received.

18 (Plaintiff's Exhibit 124a received in evidence)

19 MS. STAREN: Okay. Mr. Haywood, could you please play
20 the clip for Plaintiff's Exhibit 124a.

21 (Video played)

22 BY MS. STAREN:

23 Q. Okay. Just for clarification purposes, Mr. Myung, can you
24 tell me who is the first voice that spoke on that recording?

25 A. I think that was Dan Shin, the CEO.

O3RASEC4

Myung - Direct

1 Q. Okay. And the other voice was you?

2 A. Yes.

3 Q. And can you describe generally what you were discussing
4 with Mr. Shin?

5 A. So, by this point, I had left Chai and created Chai Labs.
6 So we agreed that we would actually create the stablecoin
7 technology for a cross-border payments. And I had told him
8 that we need to actually clear up this narrative of this, you
9 know, like blockchain actually being used or stablecoins
10 actually being used. Because for me, I wanted to actually
11 build that technology. So if investors and the public already
12 believe that the technology exists, then literally what am I
13 doing? It doesn't make any sense. It's very confusing.

14 Q. So when you guys are discussing this narrative, that Dan
15 Shin said that it bothers me somewhat morally that the
16 narrative is off. What is the "narrative" specifically?

17 A. So crypto investors think that Chai already uses the Terra
18 blockchain to process and settle transactions and has
19 real-world adoption. And, you know, obviously that's fake, but
20 he wanted to keep that narrative going, which is the lie
21 essentially.

22 Q. Okay. And what did you understand Dan Shin meant when he
23 told you that the narrative is "off?"

24 A. That it's a lie.

25 Q. Okay. And what did you understand Dan Shin meant when he

O3RASEC4

Myung - Direct

1 said, "it's not your problem and it's not my problem. It's
2 Do's problem?"

3 A. Well, you know, I wanted to -- Dan to take some
4 responsibility and try to help, you know, fix this. But he's
5 disclaiming any responsibility for this and pushing this on Do
6 Kwon saying, you know, he is the only person to take
7 responsibility and to fix this.

8 Q. Okay. Did there come a time when you recorded a
9 conversation with an individual named GiGi Kwon?

10 A. Yes.

11 Q. Who was GiGi Kwon?

12 A. He was head of marketing for Terraform Labs before she left
13 business and eventually became CEO of Chai Corporation.

14 Q. Okay. And do you recall approximately when you recorded a
15 conversation with GiGi Kwon?

16 A. I think it was early 2022.

17 Q. And --

18 MR. KORNBLAU: Just make clear, no relation to Do
19 Kwon.

20 Q. And you're not aware of any relationship between GiGi Kwon
21 and Do Kwon, correct?

22 A. I don't think they're family related.

23 Q. Okay. And where did this conversation take place?

24 A. Well, it was -- I was at the Chai office, but it was on a
25 video call she was working from home.

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Myung - Direct

1 Q. And did anyone else participate in this call?

2 A. No.

3 Q. And approximately how long was this conversation?

4 A. About an hour.

5 Q. And did you record the entirety of this conversation?

6 A. Yes.

7 Q. Okay. Did you have an opportunity to review with the SEC
8 the GiGi Kwon recording which we marked as Plaintiff's Exhibit
9 125a?

10 A. Yes.

11 Q. And was that a complete and accurate recording of your
12 conversation with GiGi Kwon?

13 A. Yes.

14 Q. And do you know whether a transcript was made of that
15 recording?

16 A. Yes.

17 Q. And did you have an opportunity to review that transcript?

18 A. Yes.

19 Q. And was that a true and accurate transcript of that GiGi
20 Kwon recording?

21 A. Yes.

22 MS. STAREN: Okay. At this time we would move to
23 admit Plaintiff's Exhibit 125a into evidence.

24 THE COURT: Yeah. So the continuing objection is
25 overruled subject to reconsideration after I hear the

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Myung - Direct

1 recording. The transcript is received only as an aid, but the
2 recording is received in evidence.

3 (Plaintiff's Exhibit 125a received in evidence)

4 MS. STAREN: Thank you, your Honor.

5 Mr. Haywood, could you please play Plaintiff's Exhibit
6 125a, clip one.

7 (Video played)

8 BY MS. STAREN:

9 Q. So, Mr. Myung, what did you understand GiGi Kwon meant when
10 she referenced the conflict around Terra versus Chai?

11 A. She's referencing the gentleman's agreement that was made.
12 So like basically lie about the relationship of Terra and Chai.

13 Q. And what did you understand she meant when she said it was
14 a Dan Do question?

15 A. It means that Dan Shin and Do Kwon are the only ones who
16 are able to fix the lie about, you know, like the reality that
17 there's no blockchain being used.

18 Q. Okay. And you mentioned the gentleman's agreement, and she
19 mentioned the gentleman's agreement. What did you understand
20 she was referring to there?

21 A. She meant the same thing that Dan meant to me. It was
22 basically a two-year handshake agreement where they would not
23 mention each other. They would not mention, you know, like the
24 reality of the blockchain, or like the lack there of, of Chai.

25 Q. Okay. And when she says "we're honoring that so far," what

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Myung - Direct

1 did you understand that to mean?

2 A. It means that they're -- she's allowing and like they're
3 allowing that to the public to think that Chai is using the
4 blockchain for real-world use case of, you know, payments
5 through the crypto.

6 Q. And just to be clear, when she says, "we're honoring that
7 so far," what is that that they're honoring?

8 A. That is the gentleman's agreement.

9 Q. Okay.

10 MS. STAREN: Mr. Haywood, could you please play
11 Plaintiff's Exhibit 125a, clip two.

12 (Video played)

13 BY MS. STAREN:

14 Q. Okay. And here, again, GiGi Kwon mentions this term
15 gentleman's agreement. Is that the same thing we've been
16 talking about?

17 A. Yes.

18 Q. Okay. And what did you understand GiGi Kwon was saying
19 here when she said, "changed stances really come from Dan and
20 Do?"

21 A. That they are the ultimate decision makers for this
22 agreement.

23 Q. And just to be clear, that's Dan Shin and Do Kwon?

24 A. Yes.

25 Q. Okay.

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Myung - Direct

1 MS. STAREN: Mr. Haywood, could you please play
2 Plaintiff's Exhibit 125a, clip three.

3 (Video played)

4 BY MS. STAREN:

5 Q. So, once again, the gentleman's agreement is the same one,
6 right?

7 A. Yes.

8 Q. And what did you understand GiGi Kwon meant here when she
9 said, "Terra obviously has gained a lot more through the
10 gentleman's agreement?"

11 A. So like all the Terra insiders, they made boatloads of
12 money promoting this narrative. So, you know, like in terms of
13 like Chai stock, they're not really getting much through the
14 company, but through crypto it's, you know, like super huge
15 amounts of money there.

16 Q. And did you agree with the statement that Terra obviously
17 gained a lot more through the gentleman's agreement?

18 A. Yeah. I mean, Terra, yeah, made way more, you know, like
19 up to billions dollars more.

20 MS. STAREN: Mr. Haywood, could you please play
21 Plaintiff's Exhibit 125a, clip four.

22 (Video played)

23 BY MS. STAREN:

24 Q. Okay. So here, when GiGi Kwon references Terra being
25 "utilized for Chai transactions," what did you understand that

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Myung - Direct

1 meant?

2 A. I mean, maybe she's talking about the top-up program. I'm
3 not sure. But, you know, there was no transactions ever
4 settled through the blockchain for users and merchants, so I
5 think they're sort of kind of trying to stretch that word as
6 much as possible.

7 Q. And when she says, you know, for us to say it's not, it
8 would be going against what they are saying, what they've been
9 saying so far. Who is the "they" she's talking about?

10 A. It's --

11 MR. MOREL: Objection. Leading.

12 THE COURT: Overruled.

13 A. Can you say the question again? Sorry.

14 Q. Sure. Sure.

15 When she says for us to say that it's not, it would be
16 going against what they've been saying so far. Who is the
17 "they" that she's talking about?

18 A. Don Kwon, Dan Shin, all the Terraform Labs insiders.

19 Q. Okay. And what did you understand GiGi Kwon was saying was
20 the "whole point of the gentleman's agreement?"

21 A. To lie.

22 Q. About --

23 A. About the reality of the relationship between Chai and
24 Terra.

25 Q. Okay. Mr. Myung, did there come a time, when you

O3RASEC4

Myung - Direct

1 communicated directly with Do Kwon about your concerns with
2 Chai not using the blockchain?

3 A. Yes.

4 Q. Do you recall approximately when that was?

5 A. It was some time towards the tail end of 2021.

6 Q. Okay. And did there -- did you have a phone call with
7 Mr. Do Kwon?

8 A. Yes.

9 Q. And what did you say to Do Kwon in that call?

10 A. Well, I talked to him about some of these
11 misrepresentations. Among like other kind of, you know,
12 company issues in general.

13 Q. And in that discussion, did you tell Do Kwon your
14 understanding that Chai was not actually using crypto?

15 MR. MOREL: Objection. Asked and answered. And
16 leading.

17 MS. STAREN: It's for effect on listener.

18 THE COURT: Overruled.

19 MS. STAREN: Thank you.

20 THE COURT: You may answer.

21 A. Can you ask that again? Sorry. I just got --

22 Q. Sure. In that discussion did you tell Do Kwon your
23 understanding that Chai was not actually using crypto for its
24 transactions?

25 A. Yes.

O3RASEC4

Myung - Direct

1 Q. And did Do Kwon act surprised?

2 A. No.

3 Q. Did Do Kwon disagree with you?

4 A. He just said why do you even care.

5 Q. What else did he say?

6 A. He said I don't give a fuck about Chai.

7 Q. Okay. After this conversation, did you have any further
8 discussions with Do Kwon about your concerns about Chai not
9 using the blockchain?

10 A. Yes.

11 Q. And how did you communicate with Do Kwon?

12 A. It's through KakaoTalk, which is a Korean messaging app.

13 Q. Okay.

14 MS. STAREN: Mr. Haywood, could you please pull up
15 Plaintiff's Exhibit 20 for the witness please.

16 Q. And, Mr. Myung, can you take a look at this document and
17 let us know whether you recognize Plaintiff's Exhibit 120.

18 A. Yes.

19 Q. And what are these, what is Plaintiff's Exhibit 120?

20 A. This is my KakaoTalk log with Do Kwon.

21 Q. Okay. Are these all of your Kakao messages with Do Kwon?

22 A. Yes.

23 MS. STAREN: At this point we would move to admit
24 Plaintiff's Exhibit 120 into evidence.

25 MR. MOREL: No objection, subject to a discussion we

O3RASEC4

Myung - Direct

1 had with counsel about a redaction.

2 THE COURT: Received.

3 (Plaintiff's Exhibit 120 received in evidence).

4 MS. STAREN: Thank you.

5 Q. Was Kakao an application that you could access from your
6 phone?

7 A. Yes.

8 Q. Okay. Could you please, looking at page two, at the bottom
9 of that page, there is a message dated 2022-01-15. Could you
10 please read that for me?

11 A. Yeah. It says, "for Chai Labs in its current form, it
12 conflicts with a narrative of Terra and Chai. I'll need to
13 clear it up before I raise external capital. Are you available
14 for a call tomorrow."

15 Q. And what is the "narrative of Terra and Chai" that you're
16 referring to here?

17 A. The lie that Chai uses Terra stablecoins for processing and
18 selling transactions.

19 Q. And did Do Kwon respond to your request on January 15th?

20 A. Looks like he did not.

21 Q. Okay. Did you message him again about your concerns?

22 A. Yes.

23 MS. STAREN: Okay. Could you please pull out from
24 page four the chats starting 2022-03-19, 19:20:50.

25 Q. Mr. Myung, could you please read your first message?

O3RASEC4

Myung - Direct

1 A. Said "it's all related because the reason for misalignments
2 were due to the narrative of Chai and Terra, where Chai doesn't
3 actually use blockchain tech. I wanted to actually build the
4 tech being promoted whether at Chai or Chai Labs. The
5 narrative change needs support from TFL and hashed etc."

6 Q. And can you please read Do Kwon's response?

7 A. He said, "but I don't care about Chai. That sounds like I
8 need to spend my time, of which I have very little."

9 Q. Did Do Kwon ever agree to tell the truth about Chai?

10 A. No.

11 MS. STAREN: You can take that down, thank you.

12 Q. Did there come a time when you were asked to leave Chai?

13 A. Yes.

14 Q. And approximately when was that?

15 A. Towards the end of 2021.

16 Q. And who asked you to leave Chai?

17 A. Dan Shin.

18 Q. Did Mr. Shin tell you why he was asking you to leave Chai?

19 A. He did not give me official reason.

20 Q. Do you have any understanding as to why you were asked to
21 leave Chai?

22 MR. KORNBLAU: Objection. Foundation.

23 THE COURT: Sustained.

24 Q. Did you end up leaving Chai?

25 A. Yes.

O3RASEC4

Myung - Direct

1 Q. And when did you leave Chai?

2 A. My official date I believe was January 17, 2023 -- it was
3 either 17th or 18th of 2023.

4 Q. I'm sorry. What was the year again?

5 A. 2020 -- hold on. 2022.

6 Q. Thank you.

7 And did there come a time when you filed a complaint
8 with the SEC?

9 A. Yes.

10 Q. And do you recall approximately when that was?

11 A. Towards the end of 2021, around October-ish.

12 Q. Okay. And what led you to file that complaint with the
13 SEC?

14 A. Well, because it's lies. And I really thought that the
15 whole system was going to collapse.

16 Q. When you say the -- did you say the old system?

17 A. The whole system, like the entire -- the whole just like
18 Luna, Terra, it was all built on lies. So I was just very
19 worried because I had even like family who would invest in
20 Terra because I was a chief product officer at Chai, and I just
21 had just a lot of concerns around that.

22 Q. Okay. And did you file that complaint as a whistleblower?

23 A. Yes.

24 Q. What does it mean to be a whistleblower for the SEC?

25 A. It means that you get protection from the SEC and you can

O3RASEC4

Myung - Direct

1 also qualify for rewards.

2 Q. Okay. Did you make more than one whistleblower filing?

3 A. I made several. I think I made maybe four.

4 Q. Okay. Why did you make four whistleblower complaints with
5 the SEC?

6 A. I was trying my best to alert the SEC, because this is like
7 a huge, huge scheme.

8 Q. Okay. And do you recall when the last whistleblower
9 complaint was that you filed?

10 A. Sometime like early 2022, but not exact date.

11 Q. Okay. And do some of these complaints reflect a loss
12 amount?

13 A. They might.

14 Q. Okay. And do you have an understanding as to why you put a
15 loss amount on some of those?

16 A. You know, like I filled it out without a lawyer and those
17 SEC forms are kind of complex.

18 Q. Sorry.

19 A. I just try to fill it out as best I could.

20 Q. As a whistleblower, are you eligible to receive a payment
21 from the SEC for the information you provide?

22 A. It's my understanding that it's somewhere between 10 and
23 30 percent.

24 Q. Was that a factor in your decision to file a whistleblower
25 complaint?

O3RASEC4

Myung - Cross

1 A. It was one of the factors.

2 Q. Okay. In connection with your whistleblower filing, did
3 you provide materials to the SEC?

4 A. Yes.

5 Q. Okay. And how did you decide what materials to provide to
6 the SEC?

7 A. Just anything relevant to the scheme.

8 Q. And what do you mean by "the scheme?"

9 A. Just all the misrepresentations that's being made like
10 internally as to like why this information is not reaching the
11 investors.

12 Q. Okay. Have you been promised anything from the SEC for
13 participating as a witness at trial?

14 A. No.

15 Q. Have you been promised anything by the SEC for being a
16 whistleblower?

17 A. No.

18 MS. STAREN: I have no further questions.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. KORNBLAU:

22 Q. Good afternoon, Mr. Myung. My name is David Kornblau. I'm
23 one of the lawyers for Terraform Labs in this case.

24 We've never met before; is that correct?

25 A. Yes.

O3RASEC4

Myung - Cross

1 Q. You have met with the SEC before, correct?

2 A. Yes.

3 Q. And you've been cooperating with the SEC since May of 2022,
4 or thereabouts; is that fair?

5 A. I believe so.

6 Q. Almost two years?

7 A. Yeah. It's been a long journey.

8 Q. And how many times have you met in person with the SEC?

9 A. Several times. I don't know the exact number. But it's
10 been several.

11 Q. Can you do a little better than several?

12 A. Well, this past week, met I think four times or -- past
13 month around like four or five times. No, no, no, hold on. I
14 came to New York last week, so hold on. Met twice this past
15 week.

16 Q. And going back to approximately May 2022, how many times
17 have you met with the SEC?

18 A. Well, around May I was in Korea so it was all over Zoom.

19 Q. How many Zoom calls?

20 A. Quite a lot.

21 Q. Ten, 15, 20?

22 A. Approximately, around that range I guess.

23 Q. Any in-person meetings before this trial was, you know,
24 coming up?

25 MS. STAREN: Objection. Asked and answered.

O3RASEC4

Myung - Cross

1 THE COURT: You mean other than the ones he's already
2 described.

3 Q. Before, yeah, before the trial prep, yes.

4 A. Well, I was in D.C. for my deposition. The SEC was present
5 there.

6 Q. And did you meet with the SEC before your deposition?

7 A. I was in New York in this district when they met with the
8 DOJ.

9 Q. Were you meeting with the SEC?

10 A. I'm not sure who I was officially meeting with. But both
11 the SEC and the DOJ were present.

12 MR. KORNBLAU: Your Honor, can we have a side bar,
13 please?

14 THE COURT: Sure.

15 (Continued on next page)

O3RASEC4

Myung - Cross

1 (At sidebar)

2 MR. KORNBLAU: Your Honor, we had a motion *in limine*,
3 and we've been very explicit with the SEC to tell Mr. Myung not
4 to mention other law enforcement.

5 THE COURT: Yeah. But the point was you kept pressing
6 him and he can't give a false answer. And I don't know why.
7 You had already elicited from him that he had numerous meetings
8 both in person and by Zoom. And I assume when we get to the
9 charging conference that the SEC will want me to include my
10 standard instruction about how it's perfectly proper for a
11 witness to meet with lawyers in advance of their testimony.
12 But in this case, he would not have given this answer if you
13 had not honed in in the way you did. So I don't think he
14 violated any agreement. But I also think no further reference
15 should be made to this in any argument made to the jury.

16 MS. STAREN: Great.

17 MR. KORNBLAU: Your Honor, can we have that stricken
18 because my -- you know what, let me think about that.

19 My questions were about meetings only with the SEC.
20 They did not --

21 MS. STAREN: But he has to give a complete answer.

22 MR. KORNBLAU: Just yes or no.

23 THE COURT: You really brought this on yourself. You
24 had everything you possibly could have wanted. But you
25 persisted in pushing him and he's not going to lie under oath.

O3RASEC4

Myung - Cross

1 So when you -- when it came to that meeting where the DOJ was
2 also present, he had to give an honest answer. So but I also
3 think that I have no problem having it stricken if that's what
4 you want. But now you're saying you want to think about it.

5 MR. KORNBLAU: I'm not sure. It might just draw more
6 attention to it.

7 THE COURT: Well, that's probably right.

8 MR. FERRARA: Your Honor, we could have it stricken
9 from the record without a reference to the jury. So if the
10 testimony were to go back, that would not be included.

11 THE COURT: Fine.

12 MR. KORNBLAU: That's good, thank you.

13 (Continued on next page)
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O3RASEC4

Myung - Cross

(In open court; jury present)

BY MR. KORNBLAU:

Q. Mr. Myung, you mentioned some meetings I think you said was it earlier this week or last week with the SEC?

A. Sorry. I'm just like losing track. I'm like kind of jet lagged. But as soon as I landed, it's been like a week, I met with them I think it was twice.

Q. Okay. And you were rehearsing questions for trial?

THE COURT: Sustained.

Q. Did you discuss possible cross-examination?

A. I was with my lawyer and the SEC and we were discussing like the facts of the case.

Q. Do any practice --

THE COURT: So I think I do need at this point to let the jury know it is standard American practice for lawyers who are presenting witnesses at trial to meet with their witnesses in advance and go over questions they're going to ask and possible cross-examination they may face. This is both sides routinely do this in virtually every trial in the American system.

Go ahead.

BY MR. KORNBLAU:

Q. Mr. Myung, the SEC is not your lawyers, correct?

A. My lawyer is over there. The SEC is not my lawyer.

Q. Now, on direct --

O3RASEC4

Myung - Cross

1 THE COURT: Not sure who you're pointing to, but
2 we'll -- oh, you want to identify yourself for the record.

3 MS. Fiset: I am Rachel Fiset of Zweiback, Fiset &
4 Zalduendo, and I am Mr. Myung's lawyer.

5 THE COURT: Pleasure to have you.

6 Go ahead.

7 BY MR. KORNBLAU:

8 Q. Mr. Myung, so in your direct testimony, you mentioned a --
9 what you called a visa issue. Do you remember that discussion?

10 A. Yes.

11 Q. Now, isn't it a fact, Mr. Myung, that that was a criminal
12 conviction in Korea?

13 A. I don't think it's criminal. I think it's like sort of
14 more like a parking ticket kind of thing.

15 Q. Your testimony is it was like a parking ticket?

16 A. I mean, it's more closer to that. It's a visa. It's a
17 visa issue.

18 Q. And it wasn't your own visa we're talking about, correct?

19 A. No, it was the visas of the foreigners who were teaching
20 English.

21 Q. Okay.

22 MR. KORNBLAU: Can we, Mr. Aquino, bring up
23 Defendants' Exhibit 305 for identification.

24 Q. Mr. Myung, this is in Korean. Can you see that it is a
25 copy -- can you see what it is?

O3RASEC4

Myung - Cross

1 A. Yes, I see it.

2 Q. What is it?

3 A. It's a fine for -- related to the employment of foreigners.

4 Q. Okay. And there is an English -- certified English -- a
5 translation beginning on page nine.

6 Do you see that in front of you?

7 A. Yes, I do.

8 MR. KORNBLAU: Your Honor, we offer Exhibit D305 which
9 includes both the Korean version and the English translation
10 into evidence.

11 MS. STAREN: Your Honor, we have no objection subject
12 to obviously --

13 THE COURT: I'm sorry?

14 MS. STAREN: Sorry. We have no objection subject of
15 course to the arguments we've made in motion *in limine*.

16 THE COURT: Yeah. Okay. Received.

17 (Defendant's Exhibit 305 received in evidence)

18 MR. KORNBLAU: All right. If we can publish to the
19 jury, the English version starting on page nine.

20 Q. So, Mr. Myung, this is a decision and order of the Seoul
21 Central District Court; is that correct?

22 A. Yes.

23 MR. KORNBLAU: Show us the top of the document,
24 Mr. Aquino.

25 Q. And it's dated November 8th, 2017; is that correct?

O3RASEC4

Myung - Cross

1 A. Yes.

2 Q. And the defendant is Myung Aaron Hong; is that yourself?

3 A. That's correct.

4 Q. And then going down below, there's the order and you
5 referred to a fine; do you see that?

6 A. Yes.

7 Q. And then if we scroll further down there's a section called
8 facts of the crimes. Do you see that?

9 A. Sure. That's the translation, but yeah.

10 Q. And the translation is "crime," correct?

11 A. Sure. It's probably more like infraction, but yeah.

12 Q. That's your word "infraction?"

13 A. Doesn't really matter. It's Korean.

14 Q. Yeah, well, the word of the court's order is "crime."
15 Isn't that correct?

16 MS. STAREN: Objection, your Honor. This is a
17 translation and Mr. Myung has not testified that he accepts it
18 or that it's true and correct translation. He's being asked
19 to -- apologies.

20 THE COURT: Well, you did not make an objection to the
21 translation's accuracy when it was offered. You referenced
22 another objection you had made that I had dealt with
23 previously. So that doesn't prevent you from asking this
24 witness on redirect whether he agrees with that translation,
25 but at least for now it will stand as is.

O3RASEC4

Myung - Cross

1 A. So the word in Korean is--

2 Q. There's no question here. So let me wait until I ask a
3 question, Mr. Myung, and then you can answer it.

4 MR. KORNBLAU: If we can turn to page 12, Mr. Aquino.

5 Q. So you see here the Court's decision and order includes a
6 schedule on these two pages; do you see that, Mr. Myung?

7 A. Yes.

8 Q. And the name of it is "crime schedule." Isn't that right?

9 A. It's funny I mean the Korean word is "joe".

10 MS. STAREN: Objection, your Honor.

11 A. But you know --

12 THE COURT: Just so we can move this along. Tell me
13 about the Korean word.

14 THE WITNESS: The Korean word is "joe", which is like
15 more accurately translates to wrongdoing. But, you know, in
16 the American system, "crime" almost seems like, you know,
17 criminal thing, but anyway.

18 BY MR. KORNBLAU:

19 Q. You remember you took your deposition, Mr. Myung, in this
20 case?

21 A. Yes.

22 Q. Didn't you say in there that you actually couldn't fully
23 understand the Korean version of the conviction?

24 A. Well, I mean, I understand Korean enough to run business in
25 Korean.

O3RASEC4

Myung - Cross

1 MR. KORNBLAU: Can we pull up that section of the
2 deposition so the jury can see.

3 THE COURT: All right. So just for both sides, when a
4 deposition is being offered for impeachment, before you show it
5 to the jury, you need to show it to the Court and identify the
6 page and line number so your adversary can object if they want
7 to object.

8 MR. KORNBLAU: If I can phone a friend for the page
9 and line, I'd like to do that.

10 We can come back to it if it's not handy. I don't
11 want to slow things down.

12 THE COURT: We're going to stop in five minutes, so
13 you'll have obviously plenty of time if you don't find it in
14 the next five minutes.

15 MR. KORNBLAU: We'll come back. It's a point easily
16 made.

17 Q. Mr. Myung, you had a trial in Korea over this crime or
18 whatever you think it was?

19 MS. STAREN: Objection, your Honor.

20 THE COURT: Ground?

21 MS. STAREN: 403.

22 THE COURT: I think we need to excuse the jury for the
23 day and we'll take up these questions.

24 So, ladies and gentlemen, we will see you at 9:30
25 tomorrow. You've been terrific. You've been so good on time

O3RASEC4

Myung - Cross

1 and we will try to meet you fully and be ready for you at 9:30
2 as well. So we will see you tomorrow.

3 (Continued on next page)

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O3RASEC4

Myung - Cross

(In open court; jury not present)

THE COURT: Please be seated. You may step down, and we'll see you at 9:30.

So my recollection is that when we discussed this in connection with the motion *in limine*, I was told by defense counsel that they were just going to put in the certified copy of the conviction, and now I'm hearing questions about going well beyond that.

MR. KORNBLAU: Your Honor, that was my plan until he testified on direct that it was just a visa issue.

THE COURT: Well --

MR. KORNBLAU: I'm entitled to challenge that because I don't think that's an accurate characterization. It's an attempt to diffuse the cross as it were, but I think it's misleading.

(Continued on next page)

O3RHSec5

1 THE COURT: Well, I mean, you brought out twice that
2 it's — the translation says "crime." I would want to know,
3 but not in front of the jury, whether this is a violation, a
4 misdemeanor, or what. For example, not that any of you ever
5 had a parking ticket, but if you have a parking ticket in
6 New York, you have to plead guilty if you just want to send in
7 your money because it's technically a criminal violation. And
8 I hope that none of you have ever engaged in such criminal
9 violations. So I think we need to know more about this before
10 I can let it go further.

11 I understand you responded to his initial claim that
12 it was just a visa thing by saying, well, here it says crime
13 and there it says crime, and I let you do that. But now you
14 want to go well beyond what you had represented was going to be
15 introduced on this issue.

16 And what is it you are going to bring out from his
17 trial?

18 MR. KORNBLAU: Nothing, your Honor. I was just trying
19 to make it clear that this is not a parking ticket, that this
20 was serious, and in fact, it was punishable by more than one
21 year in prison. And the parking tickets I've gotten —

22 THE COURT: That was the reason —

23 MR. KORNBLAU: — haven't involved that kind of
24 sanction. So I really think this attempt to underplay the
25 seriousness of it is really off base. So I'm not really

O3RHSec5

1 planning to really do much more, other than I think his ability
2 to read and understand Korean seems to vary depending on the
3 circumstances. So that may be something I need to explore.

4 THE COURT: Well, if all parties are agreed, I'm
5 perfectly happy to instruct the jury that this involved a
6 misconduct that was punishable by more than a year in prison,
7 but if you're going to do more than that, we'll need to talk a
8 bit.

9 MR. KORNBLAU: Your Honor, I don't think any further
10 guidance is needed on it because it is a crime, and I wouldn't
11 want to understate that by avoiding the word "crime." But I'm
12 going to move on.

13 THE COURT: OK.

14 MR. KORNBLAU: So I don't really think we need to talk
15 about the nature of it anymore. I do think I need to get in
16 the two-year entry ban, which was part of the sanction, the
17 punishment for the crime, which is a separate document, but I
18 can do that very fast.

19 THE COURT: All right. Well, we'll take it one step
20 at a time, but that's fine.

21 Let me give you what I hope and pray is the final Paul
22 Kim designations. We've gone through them several times now.

23 I think we should reconvene at 9 o'clock tomorrow
24 because something tells me we'll have things to discuss. There
25 was a transcript — there was only one of the recordings that I

O3RHSec5

1 had any question about, but someone was going to get me a
2 transcript of that particular recording. So get it to my law
3 clerk. I'm going to run off for other matters, but get it to
4 my law clerk sometime this evening, and he'll get it to me.

5 I had tentatively indicated that I was only going to
6 give the first few lines of the proposed instruction, but
7 counsel said they wanted to explore the case law on that, so
8 I've held off. I think it's to your advantage for me to give
9 this instruction sooner than later, so give me whatever you
10 want to give me in that regard by 9 o'clock tomorrow.

11 MR. FERRARA: Yeah, first thing. Would your Honor
12 rather we sort of emailed a case or citation to chambers or
13 just come in prepared to —

14 THE COURT: So I am — I teach criminal law at
15 Columbia Law School, and I need to leave here for 3:30 to be
16 way up at Columbia, and then after that — I know you will
17 consider this quite frivolous — my wife and I go dancing
18 because our hobby is ballroom dancing.

19 MR. FERRARA: I knew that. I knew that.

20 THE COURT: So I won't be really available till about
21 11 o'clock, but if you want to send something to my clerk, and
22 I'll come in before 9 o'clock tomorrow to look at it then as
23 well.

24 MR. FERRARA: Did your Honor also want us to provide
25 copies of the transcripts of some of the recordings that

O3RHSec5

1 Mr. Myung put in? I think, because we had had that issue
2 about —

3 THE COURT: That's what I was referring to. The only
4 one I had an issue about was that one witness where he said he
5 was trying to convince her to change her position. So there
6 are two questions there. One was whether it's in furtherance
7 — her statements are in furtherance of the conspiracy, but
8 also you raised, I thought quite adroitly, the notion that many
9 of his statements would be, unlike in the other cases where
10 it's like just questions or things like that, he might be
11 asserting a bunch of facts, and then it would still be hearsay
12 as to those statements. So that's the transcript I want to
13 see.

14 MR. FERRARA: Right. I guess what I was going to say
15 is I think the point I was trying to make would apply, I think,
16 to all of the recordings because I don't think he's acting in
17 furtherance of the conspiracy at all for any purpose.

18 THE COURT: No, no, there's no suggestion that he's
19 acting in furtherance.

20 MR. FERRARA: So if he's incorporating facts in any of
21 those conversations —

22 THE COURT: Yes, I listened carefully, and I didn't
23 think that was a problem with the others. But on the one
24 you're referencing, I do want to see that, and so just give me
25 that one transcript.

O3RHSec5

1 MR. FERRARA: Yes, your Honor.

2 THE COURT: Very good. We'll see you tomorrow.

3 (Adjourned to March 28, 2024, at 9:00 a.m.)

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